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A TREATISE



ON

EXPATRIATION.

By Hay



WASHINGTON:

A. & G. WAY, PRINTERS.

1844.

DISTRICT OF COLUMBIA, TO WIT:

***** BE IT REMEMBERED, that on the third day of January,
* in the year of our Lord eighteen hundred and fourteen, and of the
* L. S. * Independence of the United States of America the thirty eighth,
* A & G. Way deposited in this office, the title of a book, the
***** right whereof they claim as proprietors, in the words following, to
wit: " A Treatise on Expatriation : " In conformity to the act of Congress of the
United States, intituled " An act for the encouragement of learning, by securing the
copies of maps, charts and books, to the authors and proprietors of such copies
during the times therein mentioned." And also to an act, entitled " An act sup-
plementary to an act, entitled ' An act for the encouragement of learning, by se-
curing the copies of maps, charts and books, to the authors and proprietors of such
copies during the times therein mentioned,' and extending the benefits thereof to
the arts of designing, engraving and etching historical and other prints."

G. DENEALE, Clk. D. Co

EXPATRIATION.

THE embarrassments attending the investigation of a point, about which different opinions are maintained, may be, always in some degree, and not unfrequently altogether, avoided, by a very simple operation. Let us first ascertain distinctly what the question is, and then define with precision the principal terms which must be used in the discussion. A great and comprehensive question never can be well argued, unless all the minor questions of which it is composed are specifically stated, and separately considered. Decomposition is essential to every complete analysis, whether the subject of investigation be material, or purely metaphysical. Introduction.

This remark is believed to be strictly applicable to the controversy selected as the subject of this address. Much indeed has been written, and more, within the last few years, has been said, for and against the British doctrine of perpetual allegiance, and the right of impressment, gratuitously inferred from that allegiance: yet the various questions into which this interesting subject must be resolved, before the truth can be regularly established, have never been distinctly stated; nor has there been an attempt to define even the principal term which belongs to the discussion.

It is my intention to submit, in the following pages, to the consideration of the American people, what I conceive to be a correct exposition of the true doctrine of expatriation. I am well aware of the difficulties which attend this undertaking; but I am impelled to engage in it, by

the hope that I may not only contribute towards the vindication of the opposition made by the United States to the British claim of impressment, but afford some aid to the great cause of freedom and humanity. As a citizen of the United States, I never can accede to a doctrine, which subjects every American seaman to the hazard of that humiliation and misery, to which the caprice of a British lieutenant may condemn him: and as a friend of human liberty, I hold in utter reprobation the idea that a man is bound by an obligation, permanent and unalterable, to the government of a country which he has abandoned, and his allegiance to which he has solemnly abjured. Such too are the feelings of all mankind. They may occasionally be weakened by the prejudice of education, or perverted by the rancor of party spirit: but they belong to the heart of man; and whatever rule governments may adopt, they have been cherished in every nation and in almost every age. I will not urge the universality of this sentiment, as an argument in support of the doctrine which it espouses. If I did, however, I should be justified by the example of an illustrious writer, (1) even when asserting a truth, the most momentous that created beings can know. But the propositions for which I shall contend require no aid except that which is furnished by facts and principles hitherto undisputed.

(1) Dugald
Stewart.

Subject,
Expatriation.

The word expatriation, though of Roman extraction, seems to have had its birth in the United States. It is not to be found in the writings of Grotius, or any of his successors. When they wish to convey *the idea*, they have recourse to the word emigration; the meaning of which falls far short of that of expatriation; or to some phrase which does not always distinctly answer their purpose. In this country however, in which such multitudes from foreign countries have sought an asylum, and in which the right to liberty and to the pursuit of happiness has been *declared* to be

among the inalienable rights of man, (2) it has been found expedient to adopt the word expatriation; by which is understood, "the removal of an individual from a country of which he is a citizen or subject, by which he ceases to be a citizen or subject of that country." In this sense, the word expatriation is used in the statute of the Virginian legislature, passed in December 1792, and was probably first introduced by the distinguished citizens to whom the revival of the state laws had been confided.

(2) See Decl. Independence.

Expatriation defined.

As a man must be a citizen before he can cease to be one, it would seem that an inquiry into the origin of citizenship ought to precede any discussion concerning its termination. But this inquiry would lead me farther than I have leisure to go; and it will perhaps be found, that every material point will be evolved in the attempt to solve the following question: "What are the circumstances which constitute the legal or political connexion between a citizen or subject and his country?" By this connexion, whatever be the materials of which it is composed, I mean citizenship, if we can ascertain with precision what this citizenship is, we shall perhaps find no difficulty in showing how its dissolution may be effected.

Question.

Wherever a government is established, it is obvious that the citizens, as such, must have certain rights, and be bound by certain duties. These rights and duties vary in different countries, according to the nature of their political institutions; but still they must exist: if they do not, the government is at an end, and the character of citizen expires with it. If there be no ruler, there is no subject: if there be no protection, there can be no allegiance.

Citizenship, what.

The inference seems to be inevitable, that the materials of which citizenship is composed, are rights and duties. Take them away, and the connexion between the citizen and his country

Rights and duties.

is dissolved. The foundation on which it stood is gone. This idea is susceptible of illustration by a reference to cases, about which there will probably be no question. It must, however, be remembered, that in stating this inference in terms so general, I do not mean to admit that all the *rights* which an individual may possess as a citizen enter into the composition of citizenship: but for the present, let it be so understood.

Case of the
American
Revolution.

The American revolution affords a signal evidence of the truth of the foregoing proposition. The people of this country possessed rights, and were bound by duties, as subjects of the British crown and empire. By the declaration of independence they renounced those duties. From that moment, all political connexion between the individuals who composed the American people, and the government of Great Britain, was dissolved; and their rights and duties in relation to that government being at an end, they ceased to be subjects.

(a) 4 Cra.
212, 3 Vez.
jr. 434.

Territorial
cession.

It may not be improper here to suggest to the reader, that the dissolution of connexion, in this instance, was effected by subjects without the consent of the government to which they owed allegiance. It is true, that the treaty of 1783 unequivocally expressed this consent on the part of the British government: but the connexion was completely dissolved before the treaty was made; and the treaty itself, "between the United States of America and his Britannic majesty," is an admission of the fact. The people of this country date their independence not from 1783, but from 1776. (a)

When a territory is gained by cession, the inhabitants of that territory are no longer citizens of the country of which the territory originally formed a part. Their rights and duties are regulated by the laws of the new sovereign, and the connexion between them and their former sovereign is annihilated. This is the case of Louisi-

ana, and of every territory in Europe that has been transferred by treaty, from one master to another, since the fall of the Roman empire of the west.

When a man is banished by a legislative, or judicial act, he ceases to be a citizen. His rights and duties are gone. He is dead in law, (*civili-ter mortuus*) (3) and the authority of the government over him ceases. (4)

Banishment.
(3) Co. Lit.
133 a.
(4) Vattel b.
1, c. 9, p 228.
Grotius, b. 2.
c. 5, s. 25.

So too that authority must be considered as being at an end, where a citizen is, by statute, declared to be an alien. All British artificers residing abroad must, according to an act of parliament, return home within six months after they shall have been thereto required by the British ambassador. (5) In case of failure the delinquents are declared to be aliens, their lands and goods are forfeited, and they are incapable of any legacy or gift.

Declaration
of alienage by
statute.

(5) Bla.
Com. 4, 160.

In all these cases, the connexion between the citizen and his country is dissolved. Neither right nor duty remain.

Now, if we suppose a case in which, from any other cause, these rights and duties have ceased to exist, it is fair to infer that the connexion between the individual and his country is, in like manner, dissolved, and the character of citizen extinct. In this state of things, that is, where the person claimed as a citizen has no right, and is bound by no duty, it is impossible to discern what ground is left on which the connexion here spoken of can stand. If there be neither right nor duty, the character of citizen seems to be, of necessity, destroyed.

Now, this case actually occurs whenever residence is permanently changed. When an inhabitant of one country migrates to another, with a view to a permanent abode there, it is manifest, not only that he is willing to surrender, but that he does *in fact* surrender, the rights which he enjoyed in the former; and it is equally clear,

By perma-
nent change
of residence.

that he is out of the reach of any effectual requisition to perform the duties of a citizen. Laws, from the exclusive sovereignty which every nation enjoys within its own limits, having no extra-territorial force, cannot reach him: and both rights and duties being thus at an end, he necessarily ceases to be a citizen. It follows then, that without residence there can be no citizenship, because, without residence, the materials of which it is composed are destroyed.

It may be objected, that the expatriation, or termination of citizenship here considered, proceeds from the act of the citizen, and that in the three last cases, put by way of illustration, the termination is effected by the act of the government.

The answer is this: The proposition intended to be illustrated was, that where the rights and duties of a citizen are at an end, the connexion between the citizen and his country is dissolved. The cases stated do afford the illustration required. In each of them, rights and duties are at an end, and in each of them, the character of citizen must be admitted no longer to exist.

If it be said that the question, "whether the character of citizen can be relinquished by the mere act of an individual, independent of the act or concurrence of his government," is still left open and unaffected by the cited cases, the remark is admitted to be correct: and it is certainly the duty of him, who asserts the right of expatriation, by the act of the individual only, to show that the concurrence of the government is not necessary. This will be attempted. But the principal object of this address is to present the subject of expatriation to the public view, so far as it relates to the United States and Great Britain; and it is intended to be proved that Great Britain *does* consent to the expatriation of her subjects.

Before I leave the cases stated above, it is proper to observe, that the statute, concerning British artificers residing abroad, is obviously founded on reasoning corresponding entirely with what is here advanced. The proposition here advocated is, that a residence abroad permanently selected, extinguishes the character of citizen. The British statute announces to artificers resident abroad, that if they do not return within a limited time they shall cease to be subjects. We have thus the authority of the British parliament for saying, that where a man quits the kingdom and chooses to reside abroad, he ought no longer to be regarded as a subject. To this doctrine no objection can be made.

Reasoning on which the statute is founded.

In stating the proposition, that where residence is permanently changed, citizenship ceases, let it be understood that I speak of the *fact* only. The right is a different subject, and must be separately considered. All that is now meant to be affirmed is, that if a citizen places himself in a situation where he has no rights, and where his duties, in consequence of that situation, never can be enforced, the connexion between the citizen and his country is, *in fact*, dissolved.

It is no answer to this reasoning to say, that a man actually residing in one country may be, and often is, a subject of another. This observation changes the question, from things to words. The difficulty disappears as soon as we have ascertained the character of the residence, which depends on the "*animus manendi*." If it be temporary only; if the citizen left his country with an intention to return, as soon as he had finished his business, or completed his tour of pleasure, he is not a resident of that in which he makes a temporary stay, in the sense in which the word is here used, and in which it is generally understood. He is a sojourner only: and when he returns to his home, no question can arise between his government and himself. His govern-

Objection from temporary residence.

ment allowed him to depart: his absence is not noticed: and when he goes back, and is called on as a citizen, and answers to that call, no controversy can possibly take place.

If it be objected, that, hitherto, the proposition "that rights and duties are at an end in consequence of a permanent residence abroad," has been assumed instead of being proved, it is admitted that the proof ought to be exhibited. Let us, then, see; 1stly, how the rights of a citizen; and, 2dly, how his duties, are affected by a permanent change of residence.

Rights extinguished by permanent change of residence.

1. The objection then is, that the rights of the citizen, though permanently absent, may still be allowed to continue, and that therefore the foundation of the foregoing argument fails.

Rights merely personal.

The answer to this objection, if not obvious, is conclusive. The objection is founded on a misapprehension of the fact. The rights of the settler abroad *cannot* be continued. In the nature of things it is impossible. For instance, the Englishman, when at home, has certain rights which may be considered as strictly personal. He has a right to seek redress, in the courts of law, for any injury which may be done to his person, his reputation, or his property: to be relieved by the writ of habeas corpus from illegal confinement; and, above all, to demand a fair and impartial trial by a jury, whenever he is charged with an offence. Now, it is manifest that these are rights, which, so far as they depend on the laws of England, he must leave behind him when he emigrates, and for the security of which he must depend on the laws of the country which he selects for his permanent abode. All rights, therefore, merely personal, are of necessity surrendered by the emigrant. This proposition is supposed to be too clear to require any illustration.

But there are rights of property, as well as of person: and it may not be superfluous, although,

as will be shown hereafter, it is not necessary to inquire how far *they* are affected by emigration.

Property is either real or personal; that is, it consists of land, or of moveables and credits. With respect to the latter, there is no question. In most countries, there is no difference as to them between aliens and citizens: in Great Britain there certainly is none. An alien, whether within the realm or not, may be the owner of goods and credits, and will be protected in his rights relating to them, in like manner as if he were a subject. These rights, therefore, do not come under consideration, as they do not belong to the subject, in his character of subject.

Rights of
property:
Personal.

Thus we see that rights, merely personal, are abandoned and lost by emigration, and that the rights relating to moveables and credits, are not involved in the discussion.

The only right then, which an emigrant citizen can retain, by the permission of the government which he has left, is the right to land. Such is the case in Great Britain. If a subject, owning land, quits the kingdom, even with an intention to settle abroad, his land is not forfeited. His right to it is still continued and protected. From this circumstance an attempt may be made to infer, that the foundation of the argument, deduced from the extinction of rights and duties, by emigration, fails, so far at least as land is concerned.

Real.

To this remark, the first answer which presents itself, is, that if the emigrant has no land, the discussion is at an end. There is no right about which it can be employed. Now, this is almost universally the fact. The reasons are obvious. The people who compose the great mass of emigration, have no land. They are almost invariably the poor or the oppressed, and they quit their native country because they are poor or oppressed. The rich, the powerful, the landholder, are content to remain at home. There is, however, another reason. Let it be supposed,

that a man possessing land should be determined to quit his country, with a view to a permanent settlement elsewhere. The first step that he takes is to sell his land. He collects his debts, and converts all his property into money or moveables. It cannot be presumed, that he who is about to quit a country for ever, will retain landed property in that country. Instances of this sort, if they ever occur, must occur so rarely, that they ought not to affect the question. We must adapt our reasoning to the well known principles of human action, and the established course of human affairs, without regarding petty and casual deviations. This remark has the sanction of British authority. *De minimis non curat lex.* The law regards not trifles. It is adapted to the cases (*quæ frequentius accidunt*) which commonly occur; to the usual course of things; and is not affected by the occurrence of a case barely possible. But I am content to surrender every case of this description; to admit, what I am not bound to admit, that he who retains land in a country from which he has removed, with an intention to remain for ever abroad, may yet be considered as a citizen or subject of the country which he has left. In yielding this point, nothing is lost. In truth, the intention to settle abroad, and the fact of retaining the ownership in land, which is to be for ever left, and in the event of leaving children, born abroad, to be for ever lost, are in such direct collision with each other, that although the case be possible, it must be admitted to be one not likely often to occur. In such a case, indeed, it would be extremely difficult to establish a bona fide expatriation.

The position then before laid down, "that a permanent removal from a country extinguishes all the rights which the emigrant enjoyed as a citizen of that country," is supposed to be proved. These rights must be rights of person or of property. As to the first, they are of necessity ex-

unct. As to the rights relating to moveables and credits, they are not involved in the discussion. They belong not to the citizen, as such. As to real property, if there be none, there can be no right brought in question by the removal. Such is, perhaps, universally the fact. Where this fact, however, does not exist, the case, from its insulated character, ought not to constitute an exception; but if it ought, it may be surrendered without impairing, in any perceptible degree, the credit or value of the principle here meant to be sustained.

There is, however, one "attenuated thread," Right of acquisition. by which it may be conceived that the emigrant and his country are still held together. The emigrant may retain the right to acquire real property. He may take land by inheritance or by purchase. Such is the law of England. This, By inheritance. however, is a capacity and not a right. In the case of inheritance, there is no right until the death of the ancestor. *Nemo est hæres viventis.* No man is heir to one in life: and even the eldest son of the owner of an estate of inheritance is so distinctly understood to have no right or interest whatever, that he may be a witness for his father in a suit in which the inheritance itself is at stake. It is obvious, therefore, that the capacity to take by descent, that is, to take a right when it shall by possibility accrue, and which, in the great mass of emigrant cases, never can accrue, cannot be considered in itself as an actual existing right, the allowance of which by the government shall continue the connexion between the emigrant and his country.

With respect to the acquisition of land by purchase, which includes devise, the same remark is By purchase applicable; and its propriety, when so applied, is more readily perceived. The emigrant obviously has no right until the purchase is made, or the testator dies. All that he can possibly possess is a capacity to hold lands, in case he shall

choose to purchase them in the country which he has quitted, or in case a friend or relation shall choose to bequeath them to him.

Now, the supposition of an actual purchase, in the ordinary sense of the word, by an emigrant, of land, in a country which he has left for ever, is too remote from probability, too speculative and visionary, to furnish the materials of a rational objection. If it be unfair to reason from extreme cases, it must be unfair, especially in discussing a great question of human right, to argue from a case which, probably, never occurred.

By devise.

But the emigrant is allowed to take land by devise. This is true: the answers, however, are conclusive. We must repeat, that this is not a right, but a mere capacity to take a right. The right itself does not accrue until the testator's death, and in the interval the expatriation is consummated. This remark, let it be remembered, applies also to the case of descent, and to that of actual purchase. In the interval between the removal and the descent, the purchase, or the will, there is no right; and, of course, nothing to impair the full and complete operation of the act of emigration. It ought farther to be remarked, that this capacity to take is of no value. Of the thousands, and tens of thousands, who have emigrated to the United States since the revolution, how many have been heirs or devisees of land? Probably, not ten. Admitting then that this capacity might be considered as a right, it would be absurd to say, and tyrannical to decide, that the rights and political character of perhaps one hundred thousand people in America, should be sacrificed, because there may be among them ten who have merely acquired or accepted property, which none but British subjects are permitted to hold.

Right of protection.

There is yet one other right which the emigrant may be supposed to retain, and which, ac-

cording to the theory of the English law, he does retain. A British subject, it is said, has a right, at all times and in all places, to the protection of his sovereign. The importance of this proposition will be seen hereafter; its fallacy, it is now our business to expose.

It must be recollected, that the right of a subject to surrender all claim to the protection of his first sovereign, and to place himself under the protection of another sovereign, is not at this moment the topic of discussion. Our present purpose is to ascertain, how far the connexion between the subject and his native country may be truly said to continue, in fact, in consequence of this supposed right of protection.

According to the principles of the common law, there can be no right, without a remedy: and nothing can be more obviously true, than that a mere naked claim or right, for which there is no remedy, is of no value, and ought not to be the foundation of a claim for any duty, especially one so important as that of perpetual allegiance. Now, what is the situation of the British emigrant who has chosen to fix his abode in the suburbs of Canton, or on the banks of the Mississippi? If he is wantonly and grossly injured by the government or by individuals, and cannot obtain redress, all that he can do, even according to the British law, is, to solicit the interposition of his sovereign. Now, whether his sovereign will interfere at all? and, if he do, to what extent his interference shall be carried? are questions which he will decide, and which he ought to decide, not exclusively on the merits of the complaint, but upon principles of sound policy with regard to the nation. Of what consequence then is this right to claim protection, if that protection may be withheld at the discretion of the supposed protector? This discretionary power, which the sovereign must possess, and is bound to exercise, it is manifest, takes away the entire substance of

the subject's supposed right, and reduces it to a phantom only. When the subject is within the realm, his rights are of a very different character. They are accompanied by remedies; and redress for every injury is afforded by the regular administration of the law, and without the special interposition of the executive authority.

Nor ought it to be forgotten, that we are here speaking of persons who have left their native country, and established themselves under the protection of another state. It is believed that there are few, if any, instances recorded by history, in which persons permanently domiciled abroad have ever received, or even claimed, the protection of the country which they had left, against the government under which they had chosen to reside. No instance is recollected, in which Great Britain has afforded that protection; none indeed in which it has ever been demanded. In the present state of civilization among mankind, there is no occasion to demand it. This claim to protection, therefore, on the part of the emigrant, seldom if ever resorted to, and unavailing if resorted to, cannot be considered as an existing right, of sufficient strength and validity, to continue the legal or political connexion now under consideration.

Objection,
from the
right to re-
turn.

Nor can it be deemed of any consequence, that the emigrant may be permitted, at any time, to return and to resume his rights, such as they were. The answer is furnished by the objection itself. Nothing can be resumed but what has been laid aside. The rights of a citizen cannot be resumed, unless they have been laid aside, or at least suspended. Now, if the emigrant can, by his voluntary absence, place them in suspense for one year, he may for ever. No line can be drawn.

Again, to return to one's native country, must be a matter of duty or of choice. That it is a matter of duty, has never yet been affirmed. If

it be a matter of choice, his rights cannot revert to him until the choice be made. The truth, however, is, that a different election has been made. The argument supposes, that the emigrant has quitted his country with a determination to return no more, and he is content that the door shall be shut against him for ever. The privilege of returning he does not ask. If it be granted as a privilege, he may waive it, according to the well known maxim of English jurisprudence, "*qui libet potest renunciare juri pro se introducto.*" No man is bound to accept a benefit.

I repeat, therefore, that by a permanent change of residence, the connexion between the emigrant and his native country is dissolved, so far as that connexion depends on the rights which he held as a citizen. The substance of all these rights is gone. Not a fragment remains. Those who shall contend that something does remain, must yet admit that it is a mere fragment. If this be conceded, it is enough. In moral and political discussion, it is idle to look for mathematical precision. The rights and happiness of thousands are not to depend on the "*apices juris*;" the subtleties of legal disquisition.

It has been already intimated, that it was not necessary to inquire into the effect of emigration, on what are called the rights of property. It was, however, *proper* to do so, in consequence of the general terms of the proposition, that citizenship consisted of rights and duties. These general terms were used, because it was believed, that it might be proved, that all rights, with a trivial exception only, are extinguished by a permanent change of residence. But *that* proposition I was not bound to advance. It covers more ground than I have occasion to occupy: in other words, it embraces rights which have no necessary connexion with citizenship. The correct proposition is, that citizenship consists, not of rights and duties generally, but of rights *strictly per-*

Citizenship consists of rights strictly personal, and duties.

sonal, and duties. If the doctrine had been thus stated, it is obvious, from what has been already said, that there would have been no difficulty whatever in shewing, that rights of this description were of necessity extinguished by a permanent emigration; and that there would have been but little to do, except to give the reason why, in the analysis of citizenship, rights of property ought not to be regarded as forming a constituent part. That reason will be now afforded.

The subject under consideration, is the legal or political connexion between the person of the citizen or subject and his country. To this, property has no necessary relation. It is a mere circumstance or accident, the presence or absence of which is immaterial. The definition of the term citizen, or subject, establishes this point. According to the laws and usages of all civilized nations, and particularly according to the law of England, citizenship comes originally from birth or naturalization only. Whether the native or the individual naturalized has property or not, the connexion between him and his country is precisely the same. The weaver, whose half starved family spend their puny and miserable existence in a cellar of the darkest and dirtiest alley in Manchester, is to all intents and purposes a subject, and neither more nor less so than Mr. Coke, or any other wealthy commoner of the realm. If this observation be correct, the inference is inevitable, that rights strictly personal are alone to be taken into view in estimating the connexion here discussed.

The truth of the position, that every man born in a country, stands in the same relation to that country with every other man; or in other words, that one native born citizen cannot be more or less a citizen than any other native, seems to be self evident. One man may have more strength, beauty or wisdom than another, or than thousands of others: he is, however, but a man. So one

subject may be the proprietor of castles and domains, yet he is as completely a subject as the pauper who is fed by his charity, or his pride, at the gate. If this be true, property and the rights of property belong not to the present discussion: they have no relation to the question of citizenship. If this be not true, those who shall say so are bound to show their influence and extent: they are bound to show, after conceding that the native resident day-laborer is a citizen, how much more or less of the character of citizen belongs to his wealthy employer.

A farther remark on this point may deserve consideration. It has been already shown, that personal property, that is, credits, money, moveables, have no connexion with citizenship. These, in all countries, may be held by aliens. Now, the distinction between real and personal property, is entirely arbitrary; the effect of policy only, and not necessarily resulting from the nature of things. In some countries, land descends to the eldest son, in exclusion of all the other children; in others, it descends to all the children equally. In some countries, where there are no children, it goes to the blood of the first purchaser; in others, to the heir of the last proprietor, without regard to the family from which he sprung. In some countries, it cannot be taken and sold to satisfy a debt; in others, it is liable to an execution, as if it were a chattel. In Great Britain, and in most other countries, none but citizens can hold lands. This is the general policy, but not universally adopted. In Great Britain itself, there is a remarkable exception. The American antenae, (people born before the revolution) though acknowledged to be aliens, are permitted to take lands by descent. If, then, it be certain, that personal property has no connexion with the character of citizen; if the difference between that and real property be the effect of an arbitrary and variable policy. and if it be impossible, after

taking the rights of property into the estimate of citizenship, to ascertain what is their extent, or influence, or effect, the inference is fair, that the connexion between the individual and his country, is to be ascertained without any reference whatever to property of any description.

But it may be asked, if real property is to be left out of view, what is the situation of the landholder? Has he not a right to vote for representatives, which the laborer does not enjoy? and is he not eligible to offices, to which the poor man, or even the rich merchant, cannot aspire? The answer is, that he has this right, that he does possess this qualification. But this right, this qualification, belong to him not as a citizen, but as a landholder. These are benefits or advantages attached to the proprietor of the land, no matter who the proprietor may be, and not to the individual owner in his character of citizen. The proof of this assertion is, that when the property is transferred, the seller is still a citizen.

If the foregoing remarks shall be admitted to be correct; if citizenship consist of rights strictly personal, and duties only, the effect of a permanent change of residence is obviously expatriation, so far as that depends on the extinction of the rights of the emigrant.

If the rights of a citizen, who has separated himself for ever from his parent country, be of necessity extinct, the inference seems to be clear, that his duties are also at an end. Where there is no right, it would be unjust to exact a duty.

2. A few words on this part of the subject will be sufficient.

The duties of a citizen or subject, as such, are soon enumerated. They are: 1, allegiance; 2, obedience to the laws for the prevention of crimes; 3, to those which require a personal service; 4, to those which require the payment of taxes on person or property; and 5, to those which require a respect for the rights of other citizens.

Duties extinct also.

Duties, what.

This is not, perhaps, a very technical arrangement; nor does Blackstone, the most methodical of the English jurists, furnish one. He contents himself with a specification of rights, which, whether vested in the government, or an individual, produce a correspondent duty. But it is proper that this arrangement should be made, in order that the question, Whether duties, as well as rights, are extinguished in fact by emigration? may be decided, by the selection of any specific duty, and then viewing that duty in relation to the emigrant.

Of the duty of allegiance, more will be said hereafter. That is reserved for the principal discussion. At present, it is sufficient to remark, that allegiance, as well as every other duty, is at an end, *de facto* at an end, because it cannot be performed. How is it possible that a man settled at St. Petersburg, or New York, or on the Ohio, can be coerced, or even required, to defend in life, limb and earthly honor, the sovereign who resides in a distant region? What has he to say to laws for the prevention of crimes in a country, where he is not? How is personal service, even if required, to be enforced? How are taxes, on person or property, to be collected, when neither person nor property is within the grasp of the collector? And, lastly, how is the emigrant bound to respect the rights of his former fellow citizens, with whom collision, of any sort, is a physical impossibility?

It is unnecessary to dilate on this part of the subject; because, if it can be shown, that the duty of allegiance is extinct, of right, as well as in fact, all other duties will, of course, be admitted to have ceased.

In the view that has been here taken of this subject, it appears that expatriation is nothing more than emigration, with an intention to reside, permanently, in another country. How that intention is to be ascertained, is a distinct question.

Right of expatriation.

But when the act of removal, and the intention clearly proved, concur, the expatriation is, in fact, complete.

Inferable
from the fact.

The inference, from the fact to the right, seems to be direct and strong; perhaps irresistible. If, from the nature of things; if, from the operation of physical causes, the connexion between the emigrant and his country be necessarily dissolved, it seems to follow that it is rightfully dissolved. It is a decree pronounced by nature, to which effectual opposition never can be made, even by governments the most powerful and the most despotic.

The proposition, however, which asserts the *right* of expatriation, is too important to be confided to the protection of this inference of the right from the fact. Other aid is easily procured.

It has been before stated, that the principal object of this address was, to present to public view the subject of expatriation, so far as the United States and Great Britain are concerned. Instead, therefore, of undertaking to prove, that the object of every government, legitimately established, is protection to the individuals of each society from the fraud or force of their associates, and of the society itself from external injury; that the individual who does not choose to accept this protection, on the terms proposed, is not bound to do so, but may go, in *vacuis locis*, to some unoccupied spot, or to some other society; that he who does accept this protection, may afterwards waive it, and seek health and happiness elsewhere; and that every member of each succeeding generation has the same natural and inalienable right; instead of undertaking to prove these propositions, so well established in the United States, it is better to meet the advocates of perpetual allegiance on their own ground, and to test the doctrine by the practice of the British government; by principles which its courts have

established, and by authorities which it professes to respect.

Let it then be conceded, that the right of expatriation is not established by the fact of expatriation. This proposition, if admitted to be true, leaves the question between the British emigrant and his country entirely untouched. This may easily be shown. The argument is, that expatriation is allowed by the laws of England.

Expatriation
allowed by
G. Britain.

Expatriation, I must repeat, is nothing more than emigration, with an intention to settle permanently abroad. This emigration is not forbidden by the laws of England. Every man, in time of peace at least, who chooses to quit the kingdom, may do so without asking permission, and without giving any explanation of his intention. Whether he is going abroad on business, or for pleasure, or with a view to a final establishment in another country, no questions are asked. The laws leave him perfectly free. Accordingly, we see that the subjects of Great Britain have, ever since the revival of commerce, exercised the right, the undisputed right, of settling themselves in various parts of the world; and, of late, in vast multitudes in these United States. The British government has seen all this, and yet no law, prohibiting emigration, has ever been passed, or even proposed. The British government, then, having allowed its subjects to emigrate, knowing distinctly that the emigrants, especially from the Highlands of Scotland and from Ireland, never meant to return, has, in fact, allowed expatriation, because it has allowed that which is substantially expatriation. On what ground, then, can the British government, an eye witness for years of the daily practice of expatriation, which she has never forbidden, undertake to say, that the right of expatriation does not exist?

It will be seen hereafter, that all the writers on natural law, whose works are quoted as authority, concur in the doctrine, that expatriation is a

Right to leave
a country, if
no law for-
bidding it.

natural right, and may be exercised where it is not forbidden by law. In England, there never was such a law. There is no such law now, unless it be of very recent date. I repeat, therefore, that as Great Britain allows her subjects to go abroad, knowing that they mean to settle permanently elsewhere, the right of expatriation is as completely established by her own authority, as if distinctly recognised by an act of parliament.

Highland
Emigration
Society.
(6.) See his
pamphlet on
the causes &
effects of
emigration
from the
Scottish
Highlands.

This recognition, if I understand lord Selkirk, has in fact been made. (6) In the year 1803, a society in Scotland, called "the Highland Emigration Society," procured from parliament an act, of which the object was *declared* to be, to prevent the hardships and abuses to which the Highland emigrants were exposed; an act *regulating*, not *restraining* emigration. It is well worthy of remark, that the *real* object of this law, according to lord Selkirk, was to *discourage* emigration. The expense to which the emigrants were exposed, by the humane regulations, alleged to be for their benefit, was greatly increased, and could be borne only by a few. If this statement be correct, we here see the British parliament disposed to restrain emigration, but unwilling to avow its motives; and, in fact, professing to be governed by one, the influence of which was not felt. It is, perhaps, equally remarkable, that the "Highland Emigration Society," in their articles of association, took especial care to announce, that they had no view "to restrain the constitutional rights of the Highlanders," but only meant to guard them against oppression, in the exercise of those rights. To this declaration his lordship does not seem to give entire credit; and, with the aid of Malthus, he endeavors to persuade them to dismiss their fears about emigration, because, upon principles, now well understood, it never can have a permanent effect on the population of a country.

Thus we find the British parliament, indirectly, but distinctly, giving its sanction to the right of expatriation; and a society, hostile to the practice, admitting that right to be guaranteed by the principles of the British constitution.

In truth, the parliament of England seems to have adopted, at a very early period, the idea, that it was lawful for a subject to throw off his allegiance, and to become a member of another state. This position seems completely warranted by the statute of 14 and 15 Hen. 8, c. 4, passed in the year 1522. The title of the statute is in these words: "*What customs and impositions Englishmen sworn to foreign princes shall pay.*" The preamble is, in many points of view, worthy of notice, and I will therefore give it at full length. The words are, "Prayen the common
 "in this present parliament, that where many and
 "divers persons, being the king's subjects, naturally born within this realm, have withdrawn
 "themselves out of the same realm, and transported themselves with their wives, children
 "and goods, into Holland, Zealand, Brabant, Flanders, and into other countries of foreign
 "princes, and there be sworn to the obeisance of the princes and lords of the countries, where
 "they be now inhabited, making there great buildings, and be contributaries to all manner
 "of charges, as the subjects of those countries be:
 "and thus they maintain, as much as in them is, the cities, boroughs and towns of those countries, and many more of the king's subjects intend to do the same, if remedy therein be not
 "provided; which subjects born in England, notwithstanding that they thus estrange themselves from the king's obeisance, yet they occupy here, in all the ports, havens and creeks, cities, boroughs and towns of England, as freely
 "and as free in custom and subsidy as the king's subjects do occupy, and not only for themselves, but colourably for other strangers, their friends

Statute of
Henry 8th.

“and partners, and also make themselves quit and
 “exempt from all charges within this realm, in
 “prejudice and decay of the cities, towns and bo-
 “roughs of England; and as far beyond the sea,
 “they will obey to none authority granted to the
 “English nation by the king's highness and his
 “noble progenitors under the great seal of Eng-
 “land, and by authority of parliament, but *they*
 “*give themselves over to the protection and de-*
 “*fence* of those outward princes, to whom they
 “be sworn subjects, and by these manner of per-
 “sons much coin is conveyed out of the realm.”

This solemn, if not melancholy exposition of the evils resulting from the emigration of British subjects, who had “estranged themselves from the king's obeisance,” and “sworn obeisance,” and “given themselves up to the protection and defence of outward princes,” evils which were likely to continue and increase if “remedy therein” was not provided, is not followed by a denunciation of such conduct as illegal, or any penalty against emigration, or the assumption of allegiance abroad. Nothing of that kind is intimated. The enacting part of the statute merely provides, “that
 “all and every such subjects born in England,
 “and sworn to be subjects to foreign princes and
 “lords of outward parts, from henceforth (as
 “long as they shall so abide and be as sub-
 “jects to foreign princes and lords,) that from
 “henceforth, so long they and every of them shall
 “pay such customs, subsidies, tolls and other im-
 “positions, within this realm of England, as other
 “strangers of those parts,” &c. &c. with a proviso, that “when they return to the realm, here
 “to tarry and inhabit,” they may, by writ out of chancery, be restored to the privilege of paying as all other Englishmen do.

British doctrine of perpetual allegiance.

Yet the British statesmen, the British judges, the British lawyers, all say, that the right of expatriation does not exist; that the connexion between a subject and his country never can be dis-

solved; that a man who is born in the allegiance of his Britannic majesty, must, through all space and time, and under all circumstances, remain a subject; in fact, that the allegiance, which binds him to be true and faithful to his sovereign, "of life, limb and earthly honor," is perpetual.

If, as Blackstone says, (7) this be a principle of universal law, every citizen, of every country, must forever owe, no matter where he may be, allegiance to his native country. Of necessity, therefore, if this be true, the United States cannot admit a native born subject of Great Britain to be a citizen of the United States; and, of like necessity, the British government, if it reason correctly on its own principles, cannot admit those who owe allegiance to the United States, or to any other country, to be British subjects. But the British government does so admit them. It does not wait even to be petitioned, as in the United States. It takes it for granted, that every man must be willing to become a British subject, and it confers the right on certain classes of persons who would often willingly dispense with it. Thus, by a law passed in the 13 Geo. II. c. 3, foreign seamen who shall have served two years in a ship of war, &c. are *ipso facto* naturalized British subjects. (8) There are several other classes of persons, who, after certain probationary services, are, by different statutes, naturalized to all intents and purposes, as if they had been born British subjects. So far has this principle been carried by parliament, that in the time of queen Anne a law was passed, naturalizing all foreign protestants whatever. This law was repealed because it was found to be inexpedient, but not from any doubt of the power or right of the government on the subject of naturalization.

Here we see a comprehensive system of naturalization, far transcending the limits which the United States have prescribed for themselves. Yet we are solemnly told by the British jurists.

Declared to be a principle of universal law.

(7) 1. Bl. Com. 369.

British statute of naturalization.

(8) 1. Bla. 375.

that allegiance is a perpetual duty! The British statutes make a foreigner a subject, to all intents and purposes whatever. This subject is bound, by his new allegiance, to defend his statutory sovereign against all his enemies; and yet this allegiance is imposed on a man, who, according to the British exposition of the principles of universal law, is the subject of another country, and therefore bound by an unalterable allegiance to that country!

Effect of
British prac-
tice of natu-
ralization
from naval
service only.

Let us pause for a moment, to trace the practical operation of this legislative principle, by virtue of which naval service makes a foreigner a subject, without any application on his part for that purpose. A Danish subject serves on board of a British trading vessel, in time of war, for two years. The British government declares war against Denmark, and the Danish seaman, who has gone home to defend his country, is made a prisoner while he is endeavouring to save Copenhagen from destruction. According to the British law, he is a traitor, and may be condemned to death, for having taken up arms against his sovereign, by statute, George III. This is unquestionably the law of England; yet Jeffries himself would scruple to pronounce the sentence. If he did pronounce it, the execution would be murder, even if prescribed by a thousand statutes. The remark, therefore, made by Blackstone, in speaking of voluntary allegiance, that it is the foreigner's own act, thus to subject himself absolutely to his new sovereign, does not apply to cases of this description; for he expressly declares, that two years service in the navy makes the foreign seaman, *ipso facto*, a British subject.

Argument
from the
British prac-
tice of natu-
ralization.

Thus, Great Britain not only exercises the right of naturalizing the subjects of foreign states, but assumes the power of naturalizing them, without their consent or knowledge. If this right be legitimately exercised by Great Britain, assuredly the right, as claimed by the United States, may be

also legitimately exercised. Ought she to deny to others this attribute of sovereignty which she asserts for herself? Is she to make foreigners subjects to all intents and purposes, and yet claim allegiance from those of her subjects, who, in imitation of her example, have been made citizens, to all intents and purposes, elsewhere?

Monstrous as this pretension is, it is maintained by Great Britain, and her conduct has been openly vindicated on the floor of congress. The pressure of the argument just stated has been felt both in America and Great Britain, and the same answer, in both countries, has been attempted. (9) It has been urged in congress and in parliament, that the allegiance which a man of full age, of sound mind, and with deliberate purpose, assumes upon himself, in his adopted country, and which he takes an oath to observe, is of inferior obligation to that which fastened upon him at the moment of his birth; that allegiance which he has abandoned his native country to shake off, and which he has solemnly abjured. Yet this infant, involuntary, and abjured allegiance, it is contended, is paramount to that which is deliberately assumed in the maturity of age, and sanctioned by the strongest obligation which religion itself can impose! Thus, though the naturalized citizen may defend his adopted country, where all his affections, and all his interests, are fixed, against all other countries, he is a traitor, and must suffer death, for making that defence against the sovereignty of the territory in which he happened to be born. But this is not all. Bound by the inextinguishable allegiance of his birth, he must obey the call of his sovereign, even if required to take up arms against the country which has hospitably opened its doors to receive him;—the country which gave birth to his wife and all his children;—the country, a part of whose soil is his own, and where every hope and every prospect that can give value to existence can alone be realized!

Notwithstanding the practice of naturalization, the British still maintain the doctrine of perpetual allegiance.

(9) See Mr. Pitkin's speech in Jan. 1813, in cong. and Mr. Croker's in parl. in March.

Allegiance from naturalization said to be inferior to allegiance from birth.

Difficult as it is to restrain those feelings which a doctrine like this is so well calculated to excite, the fallacy of the suggestion, that adopted allegiance must be subordinate to the allegiance of birth, shall be deliberately and temperately exposed.

(10) Answer from Blackstone, 1 Com. 374.

The first answer to this remark is furnished by Blackstone. He states expressly, (10) that an alien, by naturalization, is put exactly in the same state as if he had been born in the "king's allegiance." Woodeson, speaking on the same subject, represents the naturalized foreigner as being a subject, *to all intents and purposes*, except offices and grants. (11)

And Woodeson.

(11) Vol 1. 388.

From the civil law.

(12) Domat. part 2d, page 11, s. 9
Ibid 47, s. 4, and 355, 357.

Such too is the doctrine of the civil law. "Naturalization makes the persons naturalized of the same condition with the natives." (12) That this effect must be produced, seems to be implied by the term itself. To naturalize a foreigner, is to give him the rights and character which a natural born subject enjoys.

From the words of the statute.

But the conclusive answer to the suggestion, that in Great Britain, assumed allegiance is of a subordinate and qualified character, is afforded by the British statutes of naturalization. The statute before referred to, of the 13 Geo. 2. c. 3, confirmed by 20 Geo. 3. c. 20, has these words in the 2d section :

"And for the better encouragement of foreign mariners and seamen, to come and serve on board ships belonging to this kingdom of Great Britain; Be it further enacted by the authority aforesaid, that every such foreign seaman, who shall, from and after the first day of January, 1739, have faithfully served, during the time of war, on board of any of his majesty's ships of war, or any merchant, or other trading ship or ships, vessel or vessels, or privateers (which, at the time of such service, shall belong to any of his majesty's subjects of Great Britain) for the space of two years, shall, *to all intents and*

“*purposes, be deemed and taken to be natural
 “born subjects of his majesty’s kingdom of Great
 “Britain, and have and enjoy all the privileges,
 “powers, rights and capacities, (13) which such* (13) This
“foreign mariner or seaman could, should or phraseology
“ought to have had and enjoyed, in case he had justifies the
“been a natural born subject of his majesty, and distinction
“actually a native within the kingdom of Great formerly taken
“Britain.” right and capacity.

The third section of this statute declares the persons thus naturalized, to be incapable of holding offices, civil or military, or of taking a grant of lands from the crown.

Thus we see that the statute makes the naturalization absolute, to all intents and purposes, except as to offices and grants of land from the crown. But although the rights of the persons naturalized are thus limited, the naturalization is, in all other respects, complete and absolute. The naturalized foreigner is to be deemed and taken to be, to all intents and purposes, a natural born subject; and the duty of allegiance, founded on that naturalization, is as absolute and unlimited, as the allegiance of a subject born within the realm.

The argument, therefore, founded on the principle and practice of British naturalization, is not answered. The suggestion, that the allegiance, resulting from this naturalization, is subordinate to the allegiance of birth, is completely repelled by matter of record; the strong unqualified terms of the statute itself.

The error and oppression of the doctrine of perpetual allegiance, did not escape the observation of Mr. Locke, even at a time when his countrymen were perplexed by university decrees in favor of passive obedience, and grave discussions concerning the divine rights of kings. He contends that every man has a right to quit the country in which he was born, and to consult his happiness by becoming a citizen of another state; and he

Locke's opinion.

ascribes to allegiance voluntarily contracted, that perpetuity of obligation which is claimed by the British code as the peculiar attribute of allegiance from birth. "But when a man, he says, "has, by actual agreement, or by any express "declaration, given his consent to be of any commonwealth, he is unalterably and indissolubly "bound and obliged to be and remain unalterably a subject of it." (14)

(14) Locke
on Govt. vol.
2, p 207, c. 8.

No allegiance
perpetual.

In giving to allegiance, voluntarily assumed, a higher character than that allowed to the allegiance from birth, Mr. Locke affords to the principles, which I have endeavored to establish in the foregoing pages, the most direct and unequivocal support. But I must be permitted to contend, in conformity to those principles, that he has ascribed to this allegiance a quality which does not belong to allegiance of any description whatever. Allegiance, however deliberately assumed, is not permanent in its nature. The contract, or even oath of allegiance, ought not to be so construed as to compel a man to remain for ever in a country where he enjoys neither health nor prosperity. It is sufficient if he be faithful and true while he continues a citizen resident. When the residence ceases, the obligation, as we have before endeavored to shew, ceases also. A judge, commissioned for life, swears to perform the duties of his office; but he may resign at his discretion, and his conscience may be perfectly at rest, if he has performed his duty while he held his commission. Mr. Felice expresses the same idea distinctly. He says that the *duty of a citizen continues just as long as he is a citizen*, and that he ceases to be so in three ways; one of which is, "when he goes to establish himself elsewhere." (15)

(15) Droit
des Gens. vol.
1, p. 146.

Blackstone's
doctrine selected for
examination,
why.

But the doctrine of perpetual allegiance, as maintained by the British jurists, deserves a more minute examination.

In making this examination I shall confine my remarks principally to sir William Blackstone.

If the doctrine of perpetual allegiance, as advanced and explained by him, shall be shown to be absurd and indefensible, it will be needless to devote any time to other writers. If he has failed, let no man expect to succeed. I speak this with sincerity, with pleasure, and even with a sentiment of gratitude. Blackstone, if not a great man, was at least a great writer. Acute, learned and laborious, he has rendered service to all practical men in America and Great Britain, whether statesmen or lawyers. From the "rudis indigestaque moles," the rude and disjointed materials, from the dark chaos of the common law, there has sprung up under his hand a system full of light, beauty, order and elegance. What man could do, he has done. But he could not effect impossibilities. His materials are often bad; and although they are invariably placed to the greatest advantage, their defects cannot always be concealed. In that part of the system now about to be examined, it will be seen at once that the defect is not in the workmanship, but in the materials.

The doctrine advanced by Blackstone is this: The doctrine. that "it is a principle of universal law, that a subject of one sovereign cannot, by any act of his own, no, not by swearing allegiance to another, put off or discharge his natural allegiance to the former." This is the proposition. The reasons alleged in its support, will be hereafter stated and examined.

Upon this doctrine, which the present state of things between the United States and Great Britain has rendered in the highest degree interesting, many remarks occur which I shall not hesitate to exhibit at full length; relying, however, almost exclusively, on principles established or recognised by British authority.

The reader, however, ought to be previously reminded, that if it be a principle of universal law, that the allegiance of birth is permanent and

Contradicted by practice of naturalization.

unalterable, the British statutes authorizing naturalization, and the laws of the civilized world, which authorize the same thing, are in direct hostility with that principle. The excuse offered by Blackstone for the mischief which may spring from naturalization, to wit, that it is the fault of the individual to contract a new allegiance, while bound by another, is not always founded in fact. The foreign seaman is, by two years' service, ipso facto, without any other act of his own, a naturalized British subject. But, if blame could be imputed to him, the censure ought not to come from a nation which has passed a solemn statute for the express purpose of *encouraging* this fault. The remark of Blackstone, therefore, in relation to the law and policy of England at least, is not warranted by the fact; and if it were true, not only candor, but common justice forbids the Englishman to make it. If there be any wrong, his nation is, at least, *particeps criminis*; a party in the transaction.

It is obvious from what has been said, that Blackstone was well aware of the incongruity between the British doctrine of perpetual allegiance and the British practice of naturalization; yet, he scarcely attempts to surmount the difficulty. He contents himself with throwing the blame on the individual; and then, with a temerity which may be more easily accounted for than excused, he endeavours to cover the common law doctrine of perpetual allegiance, by declaring it to be founded on "a principle of universal law."

Bla. says, "founded on a principle of universal law."

This position denied.

This is, indeed, lofty and *imposing* language; and perhaps it would be difficult to select a passage in any book whatever, which has produced a more general delusion. Yet, I venture to affirm, that the writer is totally mistaken. Perhaps I do not distinctly comprehend what is meant by the term "principle of universal law:" but if Blackstone meant to affirm, that the doctrine of perpetual allegiance had been universally

adopted ; or that it prevailed among the nations most distinguished for learning and the arts, “the master states of Greece and Rome;” or that it is supported by the writers on the law of nature and nations, which seems to have a better claim to the character of universal law, than any other code or system, the error of the affirmation shall be unquestionably shown.

But before I undertake to expose this error, the temerity of which the writer must have been conscious of, when he advanced it, deserves our notice. Blackstone's temerity.

It will be remembered, that his object was to give sanction and support to a doctrine of the common law, which, according to his own view, was not entirely free from difficulty, and he endeavors to effect his purpose by declaring this doctrine to be founded in a principle of universal law. To justify this important declaration he refers to one writer only, and that writer an English judge expounding the law of England. A principle so interesting to mankind, would seem to require more support than could be afforded by a single reference, although that reference be to lord Refers to Hale only. (16) ¹ Hale, 68.

But this is not all. Lord Hale does not use the expression for which he is quoted by Blackstone. He says that a man cannot owe allegiance to two princes or states ; a point admitted and to be hereafter noticed ; and that natural allegiance cannot be divested without the concurrence of the prince to whom it was first due. It is true, that this last proposition is advanced without any modification and without any reference, *in terms*, to the law of England. But he was speaking of the law of England, and all his propositions must be considered as explanatory of the law of England, and confined to that law, unless there be an explicit averment or notice to the contrary. If this reasoning be not admitted to be correct, there are few positions taken by lord Hale. or even by Black- Not supported by Hale.

Hale refers
to feudal law
only.

stone, which may not be said to be sanctioned by principles of universal law. Hale himself quotes no writer upon universal law, but takes all his illustrations from cases strictly and exclusively feudal in their nature. In fact, illustrations could be obtained from the feudal system only, until the establishment of which, by the barbarous nations which took possession of all the provinces of the western empire, the doctrine of perpetual allegiance seems never to have been known.

Origin of the
doctrine of
perpetual al-
legiance.

And here it may be proper to digress for a moment, to show what this doctrine originally was, and from whence it arose.

From the feu-
dal system.

The people who overturned the Roman empire, and settled in its various provinces, were freemen. They followed the chieftain, who led them forth in quest of new settlements, from choice, and considered their conquests as a common property in which all had a title to share. As they had to maintain their acquisitions, not only against the remnant of the Roman power, but against the more formidable inroads of new invaders, self-defence was their chief care, and seems to have been the sole object of their first institutions and policy. Every freeman, upon receiving a portion of the territory, bound himself to appear in arms against the enemies of the community. This military service was the only condition on which he held his lands. Thus, a feudal kingdom resembled a military establishment, rather than a civil institution. The victorious army, cantoned out in the country which it had seized, continued ranged under its proper officers, and subordinate to military command. Every proprietor of land, equipped for service, was ready to march to battle at the summons of his superior, to whom he owed homage or fealty; and whom, in the military language of that day, he was bound to defend in life, limb and earthly honor.

In the early ages of the feudal system, the barons regarded the right of private war as sacred.

War itself was the only honorable occupation of a freeman or soldier, and strangers were always viewed as enemies. In such a state of society and military government, it is obvious that he who had accepted lands from one prince, on the condition of military service, could not accept lands from another prince on the same condition, without being involved in perpetual difficulties where there was perpetual war. These difficulties were, however, often encountered, and the vassal who owed allegiance to both of the contending monarchs, was sure to suffer by the success of either. From the relations thus subsisting between the vassal and the lord, the military tenant of the land and the chief of whom it was held, obviously arose the doctrine, that fealty or allegiance was a duty which could not be divested without the consent of the prince to whom it was due. (17)

(17) See Rob. Hist. Ch. 5, 1 vol. and Ward's Inquiry into the foundation & history of the law of nations.

A regulation peculiar to the feudal system had a direct tendency to make this idea familiar. According to the principles of the fental system, for many years after its first establishment, the tenant could not dispose of his land without the consent of the lord; "it not being reasonable nor allowed," says Blackstone, (18) "that a feudatory should transfer his lord's gift to another, and substitute a new tenant to do service in his own stead without the consent of the lord."

(18) 2, 71.

If the foregoing statement be correct, it is manifest that the fealty or allegiance due from the tenant, was due from him as tenant. His allegiance, though binding upon him for life, unless he was released by his lord, was the allegiance of tenure, and not of birth. The oath of allegiance came from tenure, and not from birth. The place of birth was immaterial. Subjects of England held lands in France, and subjects of France held lands of the king of England. For these lands military service was due, and the oath of fealty or allegiance was the security for its performance. "With us in England," says Blackstone, (19) "it

Allegiance originally from tenure, not birth.

(19) 1, 76.

Even accord-
ing to Black-
stone.

“becoming a settled principle of tenure, that all
“lands in the kingdom are held of the king as
“their sovereign and lord paramount, no oath but
“that of fealty could be taken to the inferior
“lords, and the oath of allegiance was necessarily
“confined to the person of the king alone. But,
“by an *easy analogy*, the term of allegiance was
“soon brought to signify all other engagements
“which are due from subjects to their prince, as
“well as those duties which were simply and
“merely territorial.”

According to Blackstone, then, the duty of allegiance was at first simply and merely territorial; or, as was said before, the effect of tenure, and not of birth. This allegiance was so far perpetual, that it could not be divested without the consent of the lord; who, it must be remarked, could not transfer his seignory without the consent of the tenant. But we now see, that by what is called “an easy analogy,” this territorial allegiance, this duty founded on tenure, and co-existing with it only, has been converted into the perpetual and unalterable allegiance of birth. Yet it is Blackstone himself who tells us, that this very allegiance, proceeding by an easy analogy from allegiance by tenure, is founded on a principle of universal law!

Hale’s opi-
nion rather
opposed to
that of
Blackstone.

For this principle of universal law, Blackstone, as we have seen, refers to Hale. The passage cited does not justify the reference. On the contrary, the chapter to which this reference conducts us, contains a doctrine which forbids us to ascribe to Hale the opinion in support of which he is quoted; a doctrine which shows, as clearly as the statute before recited, that allegiance from birth is not considered as a duty which nothing can impair. “An alien resident,” says Hale, “was compellable to take the oath of allegiance in the court leet; and in times of hostility with foreign kingdoms, especially France, aliens were constrained actually to swear fealty to the

“crown of England, and thereby to superadd an
 “actual allegiance to the local allegiance which
 “they had, being under the king’s protection as
 “subjects, though in truth they were the natural
 “subjects of the hostile prince. If they refused,
 “they were imprisoned, or expelled the king-
 “dom.”

This quotation answers two purposes; it corroborates the argument founded on the practice of England, and it proves that Hale does not support Blackstone in his assertion of this supposed principle of universal law.

It is to be observed, however, that Hale refers to Coke’s report of Calvin’s case (20) for all that he omits on the subject of allegiance. It may be proper, therefore, to examine how far this adoption by Hale of the principles in Calvin’s case, will afford the support required.

Hale refers
 to Coke.
 (20) 7, Rep.

In this case, it was said, or, let it be, decided, that allegiance is due by the law of nature. “Seeing, then,” says the report, “that faith, obedience and ligeance are due by the law of nature, it followeth that the same cannot be changed or taken away,” the law of nature being immutable.

But how was this proposition supported? By an inquiry into the rights and duties of man in a state of nature? By showing how far those rights and duties might be legitimately modified by government? By the history and practice of nations, and by the writings of the celebrated men who had devoted themselves to the study of that code of ethics by which men and societies are governed? There was nothing of all this. In their arguments of this cause, says Coke, “the lord chancellor and my brethren, the judges, told no strange histories, cited no foreign laws, produced no alien precedents.” The law of England afforded the only ground of decision.

Coke does
 not support
 Blackstone

Thus it appears, that in support of the foregoing assertion of a principle of universal law, Blackstone, the most distinguished of the British

jurists, stands, even after he is allowed the benefit of Hale's reference to Coke, without any support, except that which is afforded by a decision, or dictum, founded exclusively on the laws of England! It seems almost impossible to conceive that a reference more completely unwarrantable could have been made.

Decision in
Calvin's case
noticed.

A few words may be devoted to the dictum or decision itself. If, by the law of nature, we mean that law which prescribes the duty of man, as a moral agent, while in a state of nature, it is manifest that the duty of allegiance, which is a duty entirely political, cannot be regulated by it. According to this view, the proposition is palpably erroneous. If, on the other hand, we mean by the law of nature, that system of rules which reason and justice dictate for the government of men, in every situation in which they can be placed, whether as members of unconnected families, or as members of a regular and organised society, it may be conceded that allegiance is due by the law of nature. But, on what account is it due? The British authorities answer, For protection. What then is the result? Obviously, that when the protection ceases, the allegiance is at an end. But there is a farther consequence. If allegiance be due by the law of nature, and it be admitted to be due on account of protection, the sovereign who affords the protection must be entitled to the allegiance. The emigrant, therefore, who receives protection from the government under which he has sought an asylum, must owe allegiance to that government. According to Hale, as we have just seen, this reasoning has been adopted and carried into effect in England. Thus it is apparent, that the establishment of the position, that allegiance is due by the law of nature, will contribute no aid to the doctrine which inculcates the perpetuity of the allegiance of birth; but, on the contrary, is favorable, rather than adverse, to the principle of local and temporary allegiance.

Having endeavoured to shew that Blackstone is not supported by the reference which he has given, in relation to his assumed principle of universal law, and having also attempted to point out what allegiance originally was, and from whence it arose, it is proper now to contrast the doctrine advanced by Blackstone with other doctrines maintained by English jurists, and sanctioned by English courts.

The doctrine of perpetual allegiance contrasted with other British doctrines.

The quotation from Hale, formerly given, states that allegiance cannot be due from the same person to two different princes or states. Now, by the law of England, every man is declared to owe a local allegiance to the British government so long as he continues within the realm. If allegiance cannot be due to two different states, and if local allegiance be declared to be thus due, is it not clear that allegiance from birth is superseded during the continuance of this local allegiance?

Hale's opinion against two allegiances.

The answer, I know full well, will be, that Hale's doctrine is to be taken altogether; and that, while he admits this local allegiance, he maintains the perpetuity of allegiance from birth. It is true, that he does so; and this is identically the ground of my objection: nor will the force of the objection be in any degree impaired until some person shall show, what neither he nor Blackstone has shown, that there is no collision between the duties prescribed by local allegiance and allegiance from birth.

Upon this point, Blackstone gives to us abundant information; and states most clearly, that the duties, imposed by natural and local allegiance, are the same, except in point of duration: (21) of course, when they meet in collision, one must give way. (21) 4, 74

"Allegiance," says he, "is the tie or ligamen which binds every subject to be true and faithful to his sovereign liege lord the king, in return for the protection which is afforded him,

“and truth and faith to bear, of life, limb and
 “earthly honor, and not to know or hear of any
 “ill intended him without defending him there-
 “from. And *this allegiance*, we may remember,
 “was distinguished into two species; the one na-
 “tural and perpetual, which is inherent only in
 “natives of the king’s dominions; the other lo-
 “cal and temporary, which is incident to aliens
 “also.”

(22) 1, 370. In another place he expresses a similar idea. (22)
 “As the prince affords his protection to the alien
 “only during his residence in the realm, the alle-
 “giance of an alien is confined in point of time to
 “the duration of such his residence, and in point
 “of locality to the dominions of the British em-
 “pire.”

The only difference, then, between natural and local allegiance, according to the theory of the English law, is in point of duration. The first is said to continue for ever; the latter only during the residence of the alien: but, while this latter continues, the obligation is precisely the same.

Practice of
 administering
 the oath of
 allegiance to
 aliens.
 (23) Bla. 1,
 365.

In conformity to this idea, we find that in Eng-
 land all persons above the age of twelve, whe-
 ther natives, denizens, or aliens, may be required
 to take the oath of allegiance. (23)

Upon the same principle, aliens in England,
 when they commit that act which would consti-
 tute a breach of allegiance, or treason, in a sub-
 ject, are deemed in law to be traitors, and are
 liable to be condemned and executed as such.
 (24) Cr. Law 1, 53. The fact of being domiciled here, says East, (24)
 does in itself imply an engagement to be true and
 faithful to the government.

To this doctrine it will be readily perceived
 that I can make no objection. On the contrary,
 I contend that it is correct. I contend that every
 man who receives protection from any govern-
 ment, under which he may happen to be, owes
 allegiance to that government as long as that re-
 sidence continues. But if this be true, as laid

down by the British jurists themselves, what becomes of the duties of natural allegiance, when they happen to come into collision with those decided to be due from the alien owing a temporary allegiance?

The answer which I have ventured to give to this question, to wit: that local allegiance must supersede, while it continues, the supposed unalterable allegiance of birth, is confirmed by all the decisions and authorities which speak of treason committed by aliens. This may be supposed to be a hazardous assertion, and in direct defiance of the doctrine so often and so boldly maintained, that the allegiance of birth, on principles of universal law, is permanent and unchangeable. But this doctrine is maintained in theory only. The practice does not, cannot, come up to it.

In case of collision natural allegiance gives way.

To place this part of the subject more directly under our view, let us suppose a case to occur in England, which brings before us the question between these two sorts of allegiance.

Let us suppose an event to have occurred, which I do not hesitate to say I should even now deeply deplore. Let us suppose that an army of 100,000 men, conducted by Bonaparte, had been landed in England. A Frenchman, long resident in that country, acting on this principle of universal law, which binds him, at all times and places, true faith to bear to his sovereign, and not to hear of any harm intended him, without defending him therefrom, gives information to the enemy, by which a large portion of his army is saved from destruction. The alien Frenchman is arrested for treason; he is convicted, and dies: justly dies, the death of a traitor. His defence, founded on the perpetuity of his allegiance, on this great principle of universal law, availed him not. And why did it not avail him? There can be but one answer. The local allegiance which he owed to the country, whose protection he then enjoyed, superseded all other allegiance.

Proved by the law of England, in the case where local allegiance is claimed by the British government.

That such would be the decision of an English tribunal, will not be doubted by him who is at all conversant with the writings of Coke, Hale, Hawkins, Foster, Blackstone, or East.

Decision of
all the judges.

According to Foster, it was "laid down by all the judges assembled by the queen's command, January 12, 1707, that if an alien, seeking the protection of the crown, having a family and effects here, should, during a war with his native country, go thither, and there adhere to the king's enemies for purposes of hostility, he may be dealt with as a traitor. For he came and settled here under the protection of the crown. And though his person was removed for a time, his effects and family continued still under the same protection." The most strenuous advocate of the doctrine of expatriation, could not have gone farther towards establishing the supremacy of local allegiance, when in conflict with the supposed allegiance of birth.

The preceding case having shown that local allegiance, when claimed by England from a foreigner, supersedes the allegiance due by that foreigner to his native country, it will be proper to put another case in which the local allegiance, due from a native of England to a foreign state, comes in competition with that which his birth is supposed to have stamped indelibly upon him.

Case where
local allegi-
ance is due by
a native En-
glishman to a
foreign state.

A native of the British empire came to the United States, we will suppose, many years before the present war, married here, has a numerous family of children, and has acquired considerable property. In addition to this, he has taken the oath of allegiance and abjuration, and has faithfully performed all the duties of a good citizen. This is certainly a strong case, though common; but I am at liberty to put the strongest possible case, because, according to the English law, the allegiance of the native British subject cannot be changed by time, place or circumstance, and the emigrant is still a British subject, though

naturalized here. The United States being invaded, this man and his sons are called into military service, and the man himself is made a prisoner, while engaged in defence of every thing dear and sacred to the human heart. According to the theory of the English law; which, while it makes natural allegiance give way to local allegiance, when the latter is due to England, claims a supremacy for the former when the latter is due to a foreign power; this man is a traitor for having taken up arms against his sovereign. I say, such is the theory of the English law. But the British government cannot act upon this theory. It has not done so yet: nor can it be expected that a nation, professing to be just, humane and religious, could consent to disgrace itself before an enlightened world, by condemning a man to die for bravely defending the country in which he lived, and in which those whom nature bound him to protect were born and destined to reside.

Such a condemnation could not be reconciled to the feelings of the human heart, even if this imputed violation of natural allegiance took place in England itself instead of a distant country. The case of *Æneas M'Donald* is a memorable proof of the truth of this remark. (25) He was a native born subject of Great Britain; but he had been educated in France, always resided there, and had been in the service of the French government. In the rebellion of 1745, he joined the Pretender, and was taken prisoner. He was brought to trial for treason. His nativity was proved, and the act charged to be treason was admitted; but he declared himself to be a subject of France, and claimed the treatment due to a prisoner of war. His counsel denounced the doctrine of perpetual allegiance as slavish in itself, and exploded by the revolution, in which the whole nation had thrown off its allegiance to James 2d. The court opposed this argument, and the prisoner was convicted. But the jury

M'Donald's case.

(25) *Fost.* 59

unanimously recommended him to mercy, and George the 2d, who was a brave man, and who would have met M'Donald face to face in the field of battle, complied with the wishes of the jury. If we advert to the state of things in England, when this feeling was indulged by the jury and approved by the sovereign; if we recollect the alarm and consternation which had pervaded the whole country, the fact exhibited in this case, is indeed strong evidence, that the doctrine of perpetual allegiance from birth, ought to be expunged from the code to which it belongs.

Case of a native English man in the U. States, who acts upon the principle of perpetual allegiance.

But let us view this doctrine under another aspect. Let us suppose that a native born British subject, now within the United States, whether naturalized or not is immaterial, should act in precise conformity to this doctrine of natural allegiance. This allegiance, it will be remembered, binds him to be true and faithful to his sovereign, of life, limb and earthly honor, and never to hear of any harm intended him, without defending him therefrom. The British subject, though owing a local allegiance to the United States, understanding that the troops of the United States are marching to surprise a detachment of the British forces, gives information to the commander of the latter, in consequence of which they are enabled to escape. In the performance of this act, it will be admitted, that the British subject has done precisely what the theory of the common law supposes to be his duty. Now, mark the consequences. In the first place, the British subject has done that, for which, if it had been done by an alien in England, the punishment of death would be awarded. And in the second, the British subject has violated the local allegiance, which he owed to the United States, and for this violation, according to our laws, he must suffer death. Yet this act of treason it was his duty to commit, because he is bound to be true and faithful to his sovereign, wherever he

may be, and not to know or hear of any harm intended him, without defending him therefrom. Thus, the doctrine of perpetual allegiance, enjoins on British subjects as a duty, treason against the country which has received and protected them, and to which they owe, at the same time, a temporary allegiance, imposing all the duties required by the allegiance of birth! Reason, justice, humanity, unite to stamp folly, tyranny, and wickedness like this, with the indelible marks of their reprobation!

Such, however, is the doctrine of perpetual allegiance: and the imputation which has been just now cast upon it, must continue for ever, unless it shall be conceded, that the allegiance of birth must always yield when it comes into collision with the duties of naturalization, or of local allegiance.

It may be urged, that although Great Britain has a right to prescribe to foreigners, the exact limits of their local allegiance while within the realm, yet the allegiance which her emigrant subjects owe to the local sovereign, must be ascertained, not by her laws, but his. Of these, it may be said, that she is not bound to take notice, and that, therefore, in prosecuting those whom she claims as subjects, for offences against her laws, her decision must be regulated by her laws alone.

Objection that Great Britain is not bound to notice foreign laws on the subject of allegiance.

The principal remark is admitted to be correct; but the inference is denied. Great Britain is bound to take notice of the local allegiance which may be claimed by foreign states from her emigrant subjects. The law of nations is part of the common law of England; and by the law of nations, the duty of local allegiance is distinctly recognised. (26) "Bound by residence to the society," says Vattel, "they are subject to the laws of the state as long as they remain there, and they are bound to defend it."

Answer.

(26) Vattel, liv. 1, c. 19. Grot. b. 2, c. 2, s. 5.

In addition to this, it must be observed, that as Great Britain claims for herself, a local allegiance,

from foreign subjects, she is bound to presume, that other sovereigns claim from her emigrant subjects, especially when naturalized, a similar duty. If, then, the emigrant native of Great Britain has performed that which the local sovereign has prescribed as a duty, it is impossible that he can be legitimately punished, by any power whatever, for such performance.

The principle
of *lex loci*
applied.

In the courts at Westminster, the laws of foreign countries are frequently the topic of discussion and the rule of decision. Contracts are always governed by the *lex loci*, or law of the country, in which they were made. A contract made and to be executed in France, between two British subjects sojourning there, will be enforced by an English tribunal; though, if made in England, it might be void. Shall it then be said, that, while justice requires the application of the *lex loci* to contracts, however trivial, human actions and human rights shall be excluded from the benefit of a policy, as necessary as it is rational and humane?

Local allegiance
becomes
perpetual by
residence

Local allegiance is placed by Coke, Hale and Blackstone, on this ground: As the prince, say they, is only bound to protect the alien during his residence, the allegiance of the alien is confined, in point of time, to the duration of such residence. Now, let it be supposed that the residence is not temporary, but perpetual; that the alien has established himself permanently in his adopted country, and shown that he means to remain there for ever. If his allegiance be temporary, because his residence is temporary, ought not his allegiance, thus taking its character from residence, to be perpetual when the residence has become so?

Allegiance
and protection
reciprocal.

Another consideration on this point merits our notice. The English writers, whom we have before quoted, always proceed upon the principle, that allegiance and protection are reciprocal.

“Sicut subditus regi tenetur ad obedientiam, ita rex subdito tenetur ad protectionem.” (27) “As

(27) 7 Co 5 a.

the subject is bound to obey the king, the latter is bound to protect the subject." To this proposition no objection is intended to be made. The error does not yet appear. But in order to make this duty of allegiance perpetual, it is said that the duty of protection is perpetual. The fallacy of this idea has been already exposed. When the British emigrant is under the protection of a foreign power, to which, on account of that protection, he owes a local allegiance, he cannot be under the protection of George the 3d. This protection is not required, and if required, cannot be afforded. The royal duty, therefore, is an empty name, and cannot be the foundation of a claim so important to the rights and happiness of man. If local allegiance terminates with protection, why should not natural allegiance experience the same fate? What charm, what magic, can give to allegiance of this sort, the stamp and character of permanence and ubiquity? When Blackstone speaks of the allegiance inherent in the king's native born subjects, he says what is inexplicable. The doctrine of inherent allegiance is as absurd and unintelligible as the doctrine of inherent or innate ideas; and Locke, with perfect consistency, was the avowed and able enemy of both.

Duty of protection not perpetual.

It may be suggested, that the doctrine of local allegiance is carried too far, because, although naturalized citizens, in every country, are required to perform all the duties of native citizens, yet, this requisition is not extended to alien residents not naturalized. The answer is this: according to the English law there is no difference between the allegiance due from a British emigrant in the United States, who is naturalized, and one who is not. All allegiance to foreign states is superseded by that of birth. Another answer is, that, although the requisition above stated, be not commonly made upon aliens not naturalized, the failure to make it is entirely a matter of comity or policy. The course to be

Objection from the indulgence shown to strangers not naturalized.

Answered.

pursued depends entirely on the discretion of the government: and we have already seen, that it is the practice in England, occasionally, to tender the oath of allegiance to aliens as well as to others.

The charge
of inconsist-
ency in the
British law
supported.

If it be said that the charge of inconsistency in the common law, in relation to its doctrine of perpetual and local allegiance, is repelled by the consideration stated by Blackstone, that the difficulty in which the British subject, naturalized abroad, is involved, is produced by his own act, and that therefore the government, while it admits him to be bound by the duty of local allegiance, may lawfully punish him for having contracted the obligation; the answers are these: 1. The law does not profess to punish him for contracting this obligation. It proceeds upon a supposition that there is no obligation. At least, no notice of it is taken. Although it must be admitted to exist, the law proceeds as if it did not exist. He is charged with a violation of his natural allegiance; and, in theory, there is no excuse for him, from his having acted in conformity to the duty of his local allegiance. 2. If the British government, while it exacts, at its discretion, even an oath from those who owe only a local allegiance, denies that its emigrant subjects have a right to come under that obligation to other states, which itself requires from the subjects of all other states; the consistent course would be to prohibit emigration, and to punish in England those who shall endeavour to evade the law. This, however, the government is not disposed to do, and would not venture to attempt, even if it were so disposed. But, to allow a subject to emigrate, though it may justly be presumed that he never means to return; to allow him to go to another country, in which the duty of local allegiance immediately attaches; to punish a foreigner in England for a violation of that duty there, and to punish a British emigrant for the

performance of the same duty here, are indeed contradictions of a "peculiar kind;" but they *may be* "conceived without any confusion of ideas, and expressed without any solecism in language." It is very easy to perceive, that the reasoning, whatever it may be, which leads to such strange conclusions, is as inconsistent with the rules of logic, as the conclusions themselves are repugnant to reason and humanity.

There is yet another remark furnished by the common law on this subject, showing conclusively, that the perpetual allegiance due, by the supposed principle of universal law, from a foreigner to his own prince, is, in England, completely superseded by the allegiance of naturalization. An alien, says Blackstone, is not permitted to hold land in England, because he must then owe an allegiance equally permanent with that property, which might be inconsistent with that which he owes to his natural liege lord. (28) An alien, then, cannot possess lands in England, because he must thereafter owe an allegiance as permanent as the property, which might interfere with his natural allegiance. So far this restriction is consistent with the principle so often quoted. But we are told, that if the alien be naturalized, he may *hold* lands. Then he owes to the crown an allegiance as permanent as his property, and then the effect of this allegiance on that of his birth becomes of no consequence. Is not this a plain and direct establishment of the supremacy of the allegiance of naturalization on the ruins of the allegiance by birth? Yet the United States are to be precluded from the right to assert this very doctrine!

Case of the alien who after naturalization holds land in England.

(28) B. & Com.

We have already stated, that the government which permits its subjects to emigrate, does, in fact, authorize expatriation, because the latter is nothing more than emigration with an intention to settle abroad. When this dissolution of the connexion between the subject and his country has

Claim upon subjects after emigration inconsistent with a principle of the com. law.

been thus effected, a claim upon the subject, founded on the idea that this dissolution has not been effected, is absurd, and, on common law principles, void. A condition or qualification annexed to the grant of an estate or right, repugnant to the nature of the estate or right, is void. (29)

(29) Co. Lit.
223, a.

The conveyance of an inheritance, accompanied by a restriction of the power of alienation, is absolute, and the restriction void. On this principle, then, as the British government permits its subjects to leave the realm, with an intention to settle abroad, that is, to cease to be subjects, a duty founded on the supposition that they have not ceased to be subjects, cannot reasonably be claimed. This argument is rendered still more cogent by the consideration, that a third party, to wit, a foreign state, has become interested in the question.

Case of contracts during
infancy.

According to the common law, an infant cannot bind himself by any contract except for necessities. Yet, according to the theory under consideration, the infant, at the moment of his birth, falls under an obligation, from which there is no release but death. No matter where his destiny may lead him; no matter what his situation may be; no matter what high and even sacred duties that situation may impose, he was born a subject, and a subject he must remain. He owes the duty of allegiance, and he must perform it. If it should be urged, that the contracts of infants are susceptible of confirmation, after maturity, and that the continuation of residence after full age, may be regarded as this confirmation of the contract or obligation of allegiance, the reply is obvious. In ordinary contracts, the act of confirmation has a direct and necessary reference to the contract requiring confirmation; such, for instance, as the receipt of rent under a voidable lease. This receipt is obviously a voluntary and deliberate affirmation of the validity of the contract under which the payment is made. But

the continuation of residence after full age is a matter of course, and not of choice; and the subject cannot truly be said to have made his election, until he has actually decided to quit his country. Before that time, he has exercised no will upon the subject, and no act which he performs can be justly considered as a deliberate and intentional confirmation of this supposed contract of allegiance. It may further be observed, that in all cases of contracts, whether made by infants or persons of full age, the consent of the party supposed to be bound is an essential ingredient, and this consent is distinctly expressed. But in the present case, the party is not consulted, and the single fact, birth within the realm, is regarded as sufficient to bind him during life.

The foregoing cases have been selected for the purpose of showing, that the principle of perpetual allegiance, maintained in Great Britain, is inconsistent with other principles recognized by her jurists, or established by her courts. The cases now about to be presented, show very clearly, that this principle, even in England, has been shaken to its foundation, if not completely overturned.

According to Vattel, (30) "as it is not the (30) Book 3, c. 5, s. 75.
 " place, where a thing is found, but the character
 " of the person to whom it belongs, which fixes
 " the nature of that thing, moveables belonging
 " to neutrals, found in an enemy's country, or
 " vessels, ought to be distinguished from those
 " which belong to the enemy."

According to this doctrine, the ships and goods of an American citizen, sojourning in France, ought not to be seized as enemy's property, by the British, supposing them to be at war with France only, and not with the United States. The seizure ought not to be made by them, not only because the act would be contrary to the law of nations, but to their great principle of univer-

sal law, which renders immutable the national character of an individual.

Principle of perpetual allegiance lost sight of in the admiralty court.

But late experience has taught us, that the law of nations, and even the rules of the common law, however solemnly announced, may be modified or superseded in the British tribunals, to suit the exigency of the times.

(31) Scott's decisions.
1 Rob. Rep.

In the case of the *Vigilantia*, (31) Sir William Scott quotes, with approbation, the decision as to certain emigrants from the United States to France, who carried on trade there, after the war of 1793, between France and Great Britain, had commenced. By that decision, the share of the partner domiciled in France was condemned as enemy's property, and the share of the residents in America restored.

(32) *Ibid.*

The language of the same judge, in the case of the *Emden*, (32) deserves particular notice. Speaking of a native born Prussian, he says, "I think he has hardly a right to be considered as a Prussian subject. He is a single man, who has established no domicile, by family connexions; and, in his own person, he has been constantly employed, for ten years, in trading from Amsterdam to Greenland. By such an occupation, he is divested of his national character, and becomes, by adoption, a perfect Dutchman."—The most zealous advocate for expatriation might hesitate, before he would accompany the judge to the point to which he has advanced; and even an ordinary logician might question the accuracy of that reasoning, which, while it proved the Prussian to be a perfect Dutchman, also proved that he was quite as good a Greenlander.—The facility with which the national character of an individual, stamped upon him by a principle of universal law, is thus changed, when belligerent pretensions require such change, cannot but be observed. No comment is necessary.

Let us hear the judge again. In the case of the ship *Endraught*, (33) he expressly decides, "that ^{(33) 1 Rob. Ad. Rep.} mariners are to be characterised by the country in whose service they are employed. The master I must consider as a Dutchman, though by birth a Dane; and though he may have a wife and family in a neutral country, yet his own personal occupation has always been in the Dutch trade."

According to this doctrine, an American seaman may not only be divested of his national character, but he may change it, as easily as he can pass from one ship to another. But a British seaman, it seems, is always a British subject and seaman. His national character is fixed and unchangeable. The service in which he may be engaged, does not affect it. On the contrary, he may be seized as a British subject, wherever he is found upon the ocean.—This, however, will be hereafter noticed.

The doctrine advanced in the court of admiralty, in relation to the citizens or subjects of foreign states, has been adopted in the courts at Westminster, in relation to British subjects domiciled abroad.

In the case of *Wilson & Maryatt*, (33) lord Kenyon, in November, 1798, the same month in which sir W. Scott pronounced the opinions just quoted, advanced a corresponding doctrine. "Collet, (says he,) is a citizen of this country by birth, so that he cannot throw off his allegiance to this country. He is also a citizen of America, for purposes of commerce, it being found by the special verdict, that he has been adopted as a citizen of that country; and the circumstance of his being a natural born subject here, cannot deprive him of the advantage of being a citizen of that country." ^{In the civil courts. Kenyon's decision. (33) 8 Term. Rep.}

According to this decision, a British subject is always a British subject, in relation to allegiance, that is, when it suits Great Britain to claim him

as a subject ; but he may become a citizen of another state, for the purpose of carrying on that commerce, which, as a British subject, he could not prosecute !

Exchequer
decision.
(34) Marshall, 73.

By the law of England, an insurance effected upon an illegal voyage, is void. (34) An insurance was effected for the benefit of J. B. a native of Ireland, but an adopted and resident citizen of the United States, on a ship and cargo bound to a Danish port, during a war between Great Britain and Denmark. The vessel being lost or captured, the underwriters refused to pay, saying that the voyage insured could not be lawfully prosecuted, J. B. being a British subject. After much discussion and delay, lord Ellenborough adjourned the question to the exchequer chamber, where the decision was in favor of the insured J. B. Of course, it must have been settled, that J. B. though born a British subject, was not so completely a British subject, that he could not lawfully trade with the public enemy.

Inference
from the foregoing
decisions.

If it be said, that these decisions are correct, upon principles of expedience, and even of necessity, I am not bound to reply. Good or bad, they answer the purpose for which they are introduced. They prove that this great principle of universal law has been forced, in the English courts, both of civil and admiralty jurisdiction, to give way to considerations deemed of higher moment. If it be said, that this departure from the principle which renders the national character of an individual unchangeable, is restricted to cases arising under the complicated relations of trade and war, and that allegiance is left untouched, the observation is admitted to be true. But this observation proves nothing, except the very proposition here meant to be sustained, which is, that the national character of an individual is not, according to the decisions of the

highest English tribunals, permanent and unchangeable.

It may not be improper to conclude this part of the discussion, by stating a circumstance which will also show how little the principle under consideration is sometimes regarded by public agents in England. To the report of the secretary of state, dated March 5, 1806, there is annexed a statement of applications made to the British government, in cases of impressment, from 1st September, 1804, to 18th May, 1805, by the American consul. The fourth case in that statement is that of Thomas S. Pollok. The remark affixed to his name is in these words, "This man had a custom house protection, and a certified copy of his act of *naturalization*. He has been discharged."

The case of William Greene, No. 217, is equally remarkable. "Being married and settled in England, he was refused to be discharged. He had a custom house protection." Whether the editor of the Political Register, published in London, is correct, in saying that naturalization from marriage is established by the law of England, I cannot undertake to decide. If there be any statute on this subject, it is probably of very recent date.

The proposition stated by Blackstone, affirming the perpetuity of allegiance, having been examined, and contrasted with other doctrines recognised by the jurists and courts of England, a few moments must be devoted to a notice of the reasons on which that proposition is made to rest.

The first reason is, "that subjects, as soon as they are born, are immediately under the king's protection, at a time too, when, (during their infancy) they are incapable of defending themselves." The answer to the first part of the remark is obvious. If they owe allegiance, *because* they receive protection, when the protection is at an end the allegiance must cease. The

Examination of the reasons given for the British doctrine of perpetual allegiance.

latter part of the remark is frivolous. The duty of perpetual allegiance cannot be founded on the incapacity of the infant to defend himself, because, when that incapacity ceases, in consequence of maturity, the allegiance still continues. The real doctrine maintained by Coke, Hale, and Blackstone himself, is, that allegiance is due on account of protection; and this position no man will be disposed to controvert. The question is, not whether allegiance be due where protection is received, but whether allegiance be due where protection is not received, because it was received by the subject during infancy.

The second reason is equally fallacious. It assumes for its basis a position, not only not true, but impossible to be true. "As the prince is always under a constant tie to protect his natural born subjects, at all times and in all countries, their allegiance due to him is equally universal and permanent." Now, it is obvious, that the prince cannot be bound to protect his natural born subjects, established in foreign countries. He cannot afford them protection. They are out of his reach, and do not want this protection. They are under the protection of the local prince, to whom, on that account, they owe allegiance. It is not necessary, however, to press this point. The subject has been already noticed, in considering the rights which the emigrant subject may be supposed to retain.

Upon the whole, the common law doctrine of perpetual allegiance, appears to be erroneous in itself, opposed by the practice of parliament, and contradicted by principles sanctioned by the highest British tribunals.

Before I go farther in this discussion, it may not be improper to test the rectitude of the leading principles advanced in the first part of this address, by applying them to cases which have occurred in ancient as well as modern times, and which, from the characters of the individuals

The principles of this essay applied to particular cases.

concerned, have attracted the notice of mankind. If they shall be found to afford aid in the solution of questions hitherto not completely settled, the fact itself will be no inconsiderable evidence of their truth.

Coriolanus, a Roman citizen, eminent for valor and integrity, and distinguished by his military services, was unjustly banished by a sentence of the people. His enemies, the tribunes, procured his condemnation, by adopting a mode of taking the votes which had never been, in such a case, resorted to before. He left the city, took refuge among the Volsci, whom, though then bound by a treaty of peace with the Romans, he incited to make war against them. Coriolanus was one of the generals who conducted the army of the Volsci against his countrymen.

According to the doctrine which has been advanced, if Coriolanus had fallen into the hands of the Romans, he could not have been punished as a traitor. His banishment had dissolved the connexion between his country and himself, and if he had been taken, he could only be regarded as a prisoner of war. It will be observed that I speak only of the legal question between him and his country, and that question seems to be easily decided. If it be said that he was unjustifiable in making war, from a sentiment of revenge, upon his parent state, in which his mother, his wife and his children dwelt, I shall not be disposed to controvert the proposition. The question is, not in what light ought his conduct to be viewed, not whether he deserved punishment, but, had the Romans a right to inflict any punishment whatever?

Patkul was born a Swedish subject. He had, however, quitted his country, and settled himself in Russia, where, under the administration of Peter the Great, he attained the rank of general in his service, and became his minister at the court of the weak and unfortunate Augustus,

elector of Saxony, and for a time king of Poland. In the treaty between Charles the 12th, and this elector, in which the latter surrendered his pretensions to the crown of Poland, it was expressly stipulated that Patkul should be given up to the former. Augustus endeavoured to disappoint the vengeance of Charles, by favoring the escape of Patkul; but the scheme failed, and Patkul was actually put into the power of the tyrant, by whose order he was broken on the wheel.

(35) B. 1, c. 19. Vattel, in a note, (35) condemns the conduct of Charles, on this ground; that by permitting Patkul to sell his lands, he had consented to his expatriation.

(36) Volt. Life of Ch. 12. "By some," says Voltaire, "he was regarded as a rebel; others called him a martyr to the liberties of his country; but it was on all hands agreed, that the title of ambassador to the Czar ought to have rendered his person sacred. (36) 'The king of Sweden alone, educated in the principles of arbitrary power, thought that he had only performed an act of justice, while all Europe condemned his cruelty.'"

Upon the principles which I have endeavoured to establish, the conduct of the Swedish monarch was unjustifiable. Patkul had ceased to be his subject. He was, moreover, in a diplomatic character, which all civilized nations hold sacred. Yet, according to the theory of the common law, by which the duty of allegiance can never be impaired by time, place, or circumstance, Charles had the sanction of a great principle of universal law, when he gratified his unfeeling and vindictive spirit in the death of Patkul.

Eugene. The case of prince Eugene deserves still more the attention of every candid statesman in England.

He was a native of Paris; the son of a man who held high offices, and great possessions in France. Dissatisfied with the conduct of Louis the 14th, to his family, he refused to obey the

summons of his sovereign, requiring the return of the French princes and officers who had volunteered in the imperial service against the Turks, and openly announced his determination to devote himself to the house of Austria. Louis the 14th, who certainly had high notions of the rights and dignity of kings, when informed of this event, contented himself with a sarcastic remark, which his courtiers applauded; and the prince was suffered, without farther observation, to pursue his own course; a course attended with much calamity and humiliation to France. Yet it does not appear that Louis the 14th, or his ministers, or generals, ever conceived that the prince was a traitor. His character in England was held in the highest respect and admiration; and when he paid a visit to that country, with a view to stimulate the ministry to farther efforts, in a war of which the people began to be tired, his reception by the nation and the queen, who presented to him a magnificent sword, demonstrated that he was not regarded as a man who had violated an engagement to his natural sovereign, and thereby become a traitor. And yet, according to the theory of the common law, prince Eugene was a traitor.

According to the opinions advanced in these pages, prince Eugene had ceased to be a subject of France; and, therefore, if he had fallen into the hands of M. Tallard, or Marsin, could only have been regarded as a prisoner of war.

I am very far, however, from approving the conduct of this distinguished personage. There is an essential difference between the defence of a country in which refuge has been sought, and obtained, and a voluntary, vindictive attack on that which has been abandoned. But with this view of the subject, I have no concern.

The case of Moreau, lately killed in the service of Russia, seems, on the principle here advocated, to be free from difficulty. If, as seems

to be admitted, he was banished from France, he ceased to be a subject of the empire, and his duties, as a subject, were, in point of law, at an end. How far, *foro conscientiæ*, he was justifiable in taking up arms, in defence of Europe, against the ambition of Bonaparte, is a question of a very different sort, the discussion of which is not within the scope of my present inquiry; a question too, which could not be duly investigated, without a full knowledge of the motives and views by which he was really governed. Of these, human tribunals can take no notice. They only decide on human actions, and the intention relating to them alone. Having ascertained that the act charged was committed, and wilfully committed, they apply the law, and their functions cease. All ulterior views are excluded. These belong to the moralist and the historian; and when the latter shall have given to the world a faithful detail of the wonderful and afflicting events which have marked the close of the last, and the commencement and course of the present century, and of the conduct and actions of Moreau, so closely connected with them, the former will decide whether he was finally the victim of philanthropy, of ambition, of revenge, or of all combined.

Character of
the doctrine
here advanced.

It must be apparent to the reader, that the doctrine advocated in these pages, is, at least, intelligible, consistent and humane. Its application to every case that can arise between an individual and the country of his birth, is free from difficulty. The theory may be reduced to practice, the principles may be carried into actual operation, without injury to the rights, the welfare and peace of nations, or those feelings of the human heart, which are so frequently defied and insulted by the doctrine of perpetual allegiance.

Original plan
departed
from—Foster's
doctrine
examined.

It was my original plan to have confined my remarks to Blackstone's exposition of the British doctrine of perpetual allegiance. From this plan, however, I will indulge myself with a

slight deviation, for the purpose of presenting to the reader a few expressions, used by judge Foster, in his discourse on high treason.

This learned judge distinctly expresses his concurrence with his predecessors, in the position, that the allegiance of natural born subjects is due to the crown at all times and places. But he differs from them in words at least, if not substantially, as to the principle on which this allegiance is declared to be perpetual. Coke, Hale, and their successors, uniformly say, that allegiance is the perpetual duty of the subject, because protection is the perpetual duty of the king. The fallacy of this reasoning has already been exposed. It seems not improbable, that judge Foster was aware of this fallacy, and therefore, instead of repeating what had been said before, he takes refuge in very general terms, the exact meaning and extent of which he has not thought proper to define. "Natural allegiance," he observes, "is founded in the relation which every man standeth in to the crown, considered as the head of that society of which he is born a member." As this proposition cannot be considered as connected with the perpetuity of allegiance, no observation upon it is necessary. But the judge, in continuation of the sentence just recited, proceeds thus: "And on the peculiar privileges he deriveth from that relation, which are with great propriety called his birth-right. This birth-right, nothing but his own demerit can deprive him of. It is indefeasible and perpetual; and *consequently* the duty of allegiance which ariseth out of it, and is inseparably connected with it, is, in consideration of law, likewise unalienable and perpetual."

According to this reasoning, the allegiance of the subject, is not perpetual because the royal duty of protection is perpetual; but it is perpetual or indefeasible, because a man's birth-right is indefeasible. Now, it is to be presumed, that the

birth-right of an Englishman comprehends, in the sense in which the word is here used, all the privileges and rights which, as a natural born subject, he may lawfully claim, and, among others, the right to perpetual protection from the crown. Is it not then a very obvious inference, that Foster saw the weakness and narrowness of the foundation on which this great principle had been placed, and that he wished to strengthen and extend it? If he was satisfied with the reason which had been assigned for the perpetuity of allegiance, why should he not repeat it in the terms in which it had been commonly, if not uniformly, expressed?

In thus changing or extending the basis of the doctrine, the judge has done no service to its advocates. According to him, it is one of the "peculiar privileges" of an Englishman's birth-right to be bound *by an obligation*, from which he can never be released! There seems to be here something worse than a solecism in language.

But why should a man's birth-right be infeasible? Is it really so, in the nature of things, or according to the common sense of mankind? As far as property is concerned, a man every where may renounce his birth-right. This has never been questioned since the days of Esau. And why may he not renounce his birth-right, so far as it consists of the legal or political privileges to which he became entitled by his birth? In fact, we know that they are renounced. When a subject quits for ever the country in which alone they can be enjoyed, they are of necessity renounced.—The judge, therefore, in differing from his brethren, as to the cause of the perpetuity of allegiance, has only increased the confidence of those by whom their theory has been assailed.

It is very apparent, that judge Foster, notwithstanding the explicit expression of his concurrence with his predecessors, as to the law, though not as to the reason of it, does not in fact agree

with them as to the law itself. His expressions are worthy of notice. After having declared, that "in a modern case this doctrine was treated as a point not to be disputed," he proceeds thus : "How far prudential considerations, grounded on reasons of state, or even the principles of natural equity, may, under certain circumstances, induce the crown to dispense with a rigorous execution of the law, extremely right and expedient as a general rule, falleth not within the compass of my present inquiry." Perpetual allegiance, says lord Coke, is founded in the principles of the law of nature, and therefore immutable. Yet Foster is obliged to concede, that a rigorous adherence to that doctrine, may not only be forbidden by reasons of state, but even the principles of natural equity !—Such is the difficulty to which the ablest men must be reduced, when they endeavor to maintain a system, radically defective.

Foster further remarks : "The doctrine of perpetual allegiance, founded on birth, may, as I have said, be considered as a good general rule." In the preceding sentence he had expressly affirmed it to be *extremely* right and expedient as a general rule. He then, in continuation of the same sentence, adds : "though not universally true, cases may be put, which *will be* considered as exceptions to it, which I will not enter into at this time." Here then is a direct and unequivocal confession, that the doctrine which affirms the perpetuity of allegiance from birth, though founded on a principle of universal law, is not universally true !

Now, what is the meaning of this remark ? A plain man, taking the words alone for his guide, would not hesitate to decide, that according to this exposition, there were cases in which natural born subjects of England did not owe allegiance ; and if he was a student of law, he would be astonished that neither Coke, nor Hale, nor any

other English jurist, had ever noticed the exceptions. He would be still more astonished, when he looked over the preceding paragraph, and found the same judge expressly affirming, that as an Englishman's birth-right is indefeasible, his allegiance, arising out of it, is consequently unalienable and perpetual, and that the point had never been disputed. He would then task his own ingenuity, and endeavor to discover in what way it was possible, to be true, a point never yet disputed, that every natural born subject owed perpetual allegiance to his sovereign, and yet that there were cases in which a natural born subject did not owe this perpetual allegiance. The effort would of course be fruitless; and the inquirer would be compelled to exclaim, like the countryman in *Moliere's Medecin malgre lui*, the gentleman is so learned, that I do not understand a word that he says.

Oxenstiern's
remark ap-
plied to
writers.

The chancellor Oxenstiern remarked to his son, who doubted of his own capacity for negotiation, that it was wonderful to see with how small a portion of ability, the affairs of states and empires were conducted by those, to whom they were confided. It is to be lamented, that he, or some man of equal celebrity, has not put the world upon its guard, by a similar observation, as to the frequent want of accuracy and precision in the writings of even distinguished men, upon the most interesting subjects.

Having contrasted the theory of the common law on this subject, with the practice of the British government, and compared it with principles which its courts have established, I ought now, in conformity to the plan formerly announced, to turn to the authorities, which it professes to respect.

Expatriation,
how viewed
by other na-
tions.

Before this is done, however, it may not be amiss to inquire, in what light this subject was viewed by the nations most distinguished, in ancient times, by a knowledge of literature and the arts.

The sacred writings, in the opinion of some, perhaps, ought not to be overlooked in this discussion. The destruction which fell upon Pharaoh and his host, while endeavoring to stop the emigration of the Israelites, and the prosperity of David, the man after God's own heart, who took up arms in the service of Achish, against his own countrymen, may be regarded by some as precedents, entitled to the highest consideration. I doubt, however, the propriety of a reference to cases furnished by the historical part of the Old Testament. The children of Israel were the chosen people of the Almighty, selected to accomplish his own purposes, under his immediate direction, pursuing a course inscrutable to us, and acting on principles, which, though sanctioned at that time, appear to have been intended for them alone, and afterwards in a great measure superseded, by the revelation of those precepts and doctrines by which the Christian world now professes to be governed.

It may further be observed, that the scriptures are in the hands of every man; and, therefore, it cannot be necessary to make quotations from a book accessible to all. Let us descend to a later period, and to other nations.

The Greeks are well known to have been the most enlightened nation of ancient Europe. The practice of naturalization prevailed among them. (37) Of the right of expatriation nothing was said, because no doubt was entertained. The practice was established, and carried without controversy, to a great extent. The territories of the Grecian republics were small, and the increase of population gave rise to various emigrations, for the purpose of colonies abroad. These emigrations were conducted by private individuals, who were left to their own discretion. The colonies thus formed were entirely independent. They were connected by sentiment and by intercourse with the parent state; but that inter-

The Jews pretermitted, and why.

The Greeks.

(37) Anacharsis, vol. 1, c. 6. Gallies, vol. 2, c. 13.

(38) Brough-
ham's Col
Policy, vol 1,
b. 1, c. 1. course was upon terms of exact equality, and the
inhabitants of the colonies were completely expa-
triated. (38)

The Romans. The Romans, who borrowed some of their
(39) Pan-
dect. lib. 1,
tit. 5, sec. 4. laws, and much of their learning, from the Greeks,
adopted the principle and practice of naturaliza-
tion. (39)

According to the digest, the law of expatria-
tion will be found to be *in exact conformity* to the
principle which it is the object of this essay to
maintain. (40) "If a captive, released by us,
(40) Lib. 49
tit. 15. "shall return among his own people, he is then
"deemed to have returned under the law of post-

"liminium, if he chooses to remain with them,
"rather than to remain in our state: and, there-
"fore, in the case of Attilius Regulus, whom the
"Carthaginians sent to Rome, he was not within
"the law of postliminium; because he had sworn
"to return to Carthage, and he *had no intention*
"to remain at Rome: and so, in the case of a
"certain soothsayer, (interprese,) Menander, who,
"after being set free among us, was sent home,
"the law which was preferred about him was
"not necessary, in order to continue him a Ro-
"man citizen: *for he either intended to remain*
"in his own country, and he would thus cease to
"be a citizen, and if he intended to return, he
"would remain a citizen:" and so the law was
superfluous. Under the same head it is ex-

pressly declared, "that every man has a right to
choose the state to which he will belong." Blackstone, who, on several occasions, has con-
trasted the Roman, or civil law, with the common
law of England, where the result would, in his
opinion, be favorable to the latter, takes no no-
tice of the difference on the subject of allegiance,
between the liberality of the imperial code, and
the rigor of the English institutions.

Cicero's opi-
nion. This liberality had, indeed, according to Ci-
cero, characterised the policy of Rome, from the
earliest days of the republic; and he boasts of it

as highly honorable to his country. In the case of L. C. Balbus, the subject came necessarily under his notice. This man, an inhabitant of the ancient Gades, (the present Cadiz,) had been made a Roman citizen by Pompey, by virtue of a power which he claimed under what was called the Gellian Cornelian law. The right of Balbus, under this act of naturalization, was questioned, and Cicero undertook his defence. Some expressions in this oration deserve particular notice, and enhance the value of his opinion. They indicate a liberal and generous spirit, and an ardent attachment to that liberty, which the friends and enemies of the orator were, at that period, alike conspiring to subvert. "The whole subject of this controversy," says this distinguished philosopher, patriot, and orator, "and of my address, belongs to the common right of expansion. There is nothing in it connected with religion or compact. For I lay it down as an universal truth, that there is no nation, in any region of the earth, however separated from the Roman people, by altercation and hatred, or, however united by friendship and benevolence, by whom we are forbidden to make citizens of their people. O glorious right, by the divine favor, obtained for us by our ancestors in the commencement of the Roman name, by which no man can be a citizen of more than one commonwealth, by which no man can be compelled to leave it against his will, nor remain in it against his inclination. This is the firmest foundation of our liberty, that every man should have an absolute power to retain or abandon his rights at his election." (a) The contrast between the Roman orator, maintaining, with all the powers of eloquence, a truth, essentially connected with the liberty and happiness of mankind, and the English judge, quibbling away the life of Æneas McDonald, upon a fiction of law, palpably contrary to the fact, to wit, that

(a) Cic. Opera, vol. 6. p. 161, ed. Geneva, 1758.

he had been always under the protection of the king of England, is too great and too striking to be overlooked.

It is here proper to remind the reader, that the Roman or civil law is the law of the principal continental nations of Europe, except so far as the same may have been abrogated or modified by special regulations for the purpose. We shall hereafter see, that no important change has been adopted.

If Blackstone's principle of universal law was not known among the Greeks, and utterly reprobated by the Romans, not only in the best days of the republic, but even in the latter ages of the empire, let us see whether it has obtained any support, or countenance, from the most distinguished writers on public law.

Writers on
public law.

For the *authority* of these writers, I confess that I do not feel the most profound respect. The remark will, probably, be deemed arrogant, and the motive which leads me to make it, may not, perhaps, be approved. But to speak the truth is the first duty of man.

Their authority
questioned,
why.

When a question of municipal law is decided, the decision, at least, in the last resort, is pronounced by men, who have been devoted through life to the study and practice of the law. In cases of this kind, it is often much more important that the law should be settled, as lord Mansfield observes, than that it should be settled in any particular way. When the law is fixed, the movements and business of society are soon adapted to it as it stands. Yet we see what precautions are taken to guard against error. The decision is not entrusted to a single judge. The court is constituted of several, who, after acquiring a knowledge of the facts, listen to an elaborate discussion, in which are brought out all the arguments that learning can supply, or ingenuity suggest. The judges then reflect, consult together, and pronounce their sentence, after

the most mature deliberation. Yet they often err, and they often acknowledge their error; and so conscious are the wisest judges of the fallibility of the human judgment, that it is a rule even among themselves, never to consider as authority, any proposition, but that which constitutes the basis of the inquiry, and which is actually pronounced to be the law in relation to that inquiry. An observation incidentally stated by all the judges of a court, in giving their opinions, is not authority. It is a dictum only, and leaves the point open for discussion, whenever it shall occur.

The reverse of all this takes place in questions of public law. There is no argument addressed to its self-appointed expositor; there is no consultation; no auxiliary resource, but in the writings of those who have gone before him. This resource is often insufficient. A practical knowledge of men and human affairs, which men of great learning seldom possess, is absolutely necessary in the exposition of those great and intricate questions, on which the peace and happiness of nations so often depend. Thus we often see a writer on public law, content himself with a bare expression of his opinion, without any reasoning whatever, and sometimes, with a statement of the practice of nations, without any inquiry as to its justice or expedience; and this naked opinion, however erroneous in principle; this statement, however limited or partial, we are in the habit of respecting as the law of nations. Thus, Grotius gives us to understand, though not in express terms, that in his opinion free ships do not make free goods. Bynkershoek follows him, and he is followed, apparently, though not really, by Vattel. A question of the highest importance to the commercial world is settled in fifteen or twenty lines of assertion without argument; and courts, and statesmen, and nations are to regard this as an authority, which they are bound to respect! For my own part, I acknow-

They have
but little aid.

ledge, that in questions of public law, I never could discern, leaving treaties out of view, any authority but that of reason, justice and humanity.

Sometimes
fearful of
speaking the
whole truth.

There is yet another reason for objecting to the authority of names, however distinguished. Writers on the law of nations do not always feel themselves at liberty to speak the whole truth. Some are unwilling to place themselves in opposition to a writer of established reputation, while others are fearful of giving offence to the arbitrary governments under which they live. A single instance shall be selected. Vattel, fearful of encountering his predecessors on the subject of the neutral flag, states the law, in substance, as they state it to be; but, in a note, authorizes the belief, that his own opinion is opposed to his own exposition; and, in relation to the principal topic now under discussion, his conviction of what is right, and his fear of going too far in its assertion, have made his statement so confused and contradictory, that he leaves himself open to a quotation, both by the enemies and advocates of expatriation.

Remark of
D'Argenson
on these writers.
(41) Cont.
Social, p. 7,
in a note.

On this subject, a remark, quoted by Rousseau from the marquis D'Argenson, (41) deserves our notice. "Learned researches into public law are often nothing but the history of ancient abuses. People are under the influence of a very idle prejudice, when they devote much time to the study of it." I confess that I am strongly inclined to the same opinion; and I cannot but suspect, that he who will take the trouble to read all that the writers on public law have said on the three great questions, of the neutral flag, blockades, and expatriation, will find himself disposed to concur in this idea. The true principles, the reason of the doctrine, its practical fitness, in the ordinary state of human affairs, is scarcely noticed. From this remark, some late writers, who have undertaken to discuss particu-

far questions, are entitled to an honorable exemption.

I have made these observations with a view to put my countrymen on their guard against the precipitate concession of any important proposition, merely because it has the sanction and support of distinguished names. If, in the year 1793, the great and well known talents at the head of the department of state, had been employed in examining the question of the neutral flag, lord Sheffield, Mr. Ward, and other advocates of British maritime supremacy, it is believed, would not have been furnished with an authority, which they urge with such ostentatious satisfaction, against the neutral rights of the United States.

These criticisms, why made...

Far from being confident, that these remarks will have, or indeed ought to have, any influence on the estimate which should be formed of men who have so long occupied the public attention; I will proceed to obtain from them all the aid which their names may afford to the doctrine for which I contend.

All that Grotius states on the interesting subject before us, is found in a single section, not covering one quarto page. "It is asked," says he, "if a citizen can go out of the country without permission?" He *seems* to think that a citizen may so depart, and that the assent of the society may be inferred from its silence. He proceeds, however, to modify this proposition in such a way as to render it absurd and totally unavailing. 1. The emigrants are not to go in great numbers; as if it were not manifest that the greater the number, the more urgent and imperious must be the cause which produced the emigration. Upwards of half a million of people quitted France in consequence of the revocation of the edict of Nantz. They left their country for the sake of enjoying religious freedom. Yet, according to Grotius, they ought to have remained at home, where they were doomed to experi-

Grotius, b. 2, c. 5, s. 24.

ence the persecution with which power and bigotry never fail to pursue what they deem to be heretical opinions. 2. Nor is any man at liberty to depart if the interest of society requires that he should remain: of this interest, however, each individual is to judge; and with a sort of patriotic vanity, he is to continue at home, although his country may be perfectly content, that he should depart, and cares not, and indeed knows not, whether he departs or remains. 3. Nor is the citizen to depart where the state is much indebted, unless he pays his proportion of the public debt. On what principles this proportion is to be ascertained, we are left to conjecture. The remark itself, however, is a death blow to the hopes of all who may hereafter be disposed to emigrate from Great Britain. The proportion of an individual never can be ascertained. In the three minutes employed in any arithmetical process for that purpose, the public debt has increased by so many thousands for interest, that a new calculation becomes necessary, and then another, and so on, until the catastrophe of the grand fiscal drama, with which the British government has so long astonished the world.

This may be deemed rather ludicrous; but it is proper that the statement should be made, in order that those for whom my observations are intended, men of good sense, but not of extensive reading, may see with how little skill great men sometimes manage great subjects.

Wicquefort.

The eleventh section of the first book of the Ambassador, announces this proposition, that "a prince may employ strangers in his embassies, even in their own country;" which he illustrates by many examples from history: "All difficulty on this subject, he observes, will be removed, by deciding the question whether a subject can, without crime, withdraw himself from the subjection and obedience, which he owes to the sovereign, under whom he was born." This he

conceives the subject may certainly do; and he represents the right of expatriation, as being allowed by the laws of France, Spain, the Netherlands, and Germany. The Czar, indeed, he remarks, forbids his subjects to go out of the country; but the Muscovites, he adds, *are slaves*. There are, he continues, provinces in Germany and in the North, where the peasants, being the property of the lord of the soil, cannot change their habitation, because they cannot change their master, nor their condition: but these are remnants of *pagan servitude*. Every where else the liberty of emigration is enjoyed.

In the same section, Wicquefort, speaking of the British doctrine, heretofore discussed, makes this remark: "In England, the subjects are under a stronger and more particular obligation to the sovereign, than elsewhere, in virtue of a right which they there call allegiance: but this does not prevent the English from withdrawing from the kingdom, without the permission of the king: and when they have established themselves elsewhere, neither the authority of the king, nor of the laws of the kingdom, have any farther power over them." This authority certainly goes as far as any authority can go, in support of the doctrine maintained in this essay.

The following fact is stated by the same writer. In the year 1644, John Webster, an English merchant residing at Amsterdam, and some other English merchants, who had furnished Charles the 2d with money, were declared enemies of the nation by the parliament. The states of Holland complained of this procedure to the states general, who instructed their ambassadors to learn, by what laws or customs the parliament pretended to be guided, when they maintained that an Englishman, residing out of the kingdom, who had established his domicile in Holland, and there become a citizen, is still subject to the jurisdiction and laws of England."

It is true, that Wicquefort, does not reason very profoundly on this subject. He does not appear to think much argument necessary. He denounces the doctrine which stands in the way of his proposition, as the effect of prejudice; *as a sort of disease*, the spreading of which he will endeavor to prevent.

Heineccius,
b. 2, s. 230.

Heineccius says very little on the subject of expatriation, but his opinion in favor of the right is clear. His words are, "Again, since one is a subject, in regard that he constitutes, with others, one republic, into which he willingly enters, it follows from thence, that one ceases to be a citizen, so soon as he willingly removes, with that design, from his native country, and joins himself to another state, settling there his fortune and family, unless the laws forbid subjects to remove."

Puffendorf,
b. 8, c. 11.

An extract from Puffendorf has been already exhibited. He conceives, "that where the liberty of removal hath been promiscuously allowed, and the subject settles himself and his effects, under the protection of a foreign state, the commonwealth which he left hath no longer any authority over him." He contends, in opposition to Grotius, that subjects may depart in great companies. But then, he thinks, that in duty or honor, the intention to remove ought to be signified to the government: that men in any particular service ought not to depart; and that none ought to have leave to depart, when the debts of the state are great, unless they will pay their proportion; nor during a war, unless they are sure that they leave behind them men as competent as themselves to the public defence.

The opinions maintained by Puffendorf, though favorable, in the main point, to the doctrine for which I contend, must be admitted to be, in some respects, inconsistent, and, in all, vague and inconclusive. The cause is obvious. He did not trace the subject to its origin. He left that task, it will

he said, to the temerity of some future essayist, who had no literary character to risk. Let it be so said. Even my failure may be productive of good. He who shall detect and expose the errors into which I may have fallen, will only render service to the cause of justice and of truth, which must ultimately prevail.

The opinion of Mr. Locke has been already stated in full: it is therefore unnecessary to repeat it here. Yet I could not agree to forego the satisfaction of again presenting his name to the reader, and reminding him of the aid which the writings of this distinguished philosopher and friend of human liberty, have afforded to the position which asserts the pre-eminence of voluntary allegiance.

Vattel calls the question under consideration, a celebrated question, which, however, according to the example of his predecessors, he undertakes to decide, rather than to discuss: but after his decision is pronounced, we find it too much entangled and embarrassed to be confidently quoted. In the first place, he expressly declares, that every man, being born free, has a right, when he attains full age, to decide for himself; and if he thinks proper, to quit the country of his birth, first indemnifying it for what it has done in his favor. In this, except as to the indemnification, he concurs with Mr. Locke. In other respects, he places the subject nearly on the same ground with Grotius and Puffendorf: and, after having said that the laws of each country, on this subject, must be obeyed, he states, that permission to leave the country, is contrary to the public good; and then, with a wonderful pliability of judgment, he enumerates several cases, in which the right of expatriation cannot be restrained even by law. This absolute right, in defiance of positive law, exists, he says, 1. Where a man cannot find subsistence in his native country: 2. Where the society fails in its obligation to the members of that

Mr. Locke.

Vattel, b. 1,
c. 19, s. 20.

society: 3. Where there is any oppression in matters of conscience. Of all these things, the subject, it is to be presumed, is to be the judge. In that event, all restriction on the right is idle. If the sovereign is to be the judge, the claim, in an arbitrary government, at least, will not be made. In the language of Frederic the Great to his friend Isaac, "nothing but death will part" a sovereign and his subjects, where the choice depends entirely on himself.

Bynkershoek.
Chap. 2, Du-
ponceau's
translation.

Bynkershoek decides, that if there be no law to prohibit expatriation, it is lawful for a subject to change his condition, and to transfer his allegiance. 'This, he says, *is the case wherever the country is not a prison.*

It is not out of place here to observe, that the condition of a man who has quitted his country, in defiance of an express law, prohibiting emigration, and who afterwards falls into the hands of the officers of the government of that country, has not been considered. The inquiry would not be attended with any difficulty: but the prosecution of it, at this time, is not necessary; and will not be necessary, as long as the wars and commerce of the world require the perpetual circulation of its inhabitants.

Burlemaqui,
vol. 2, c. 5,
s. 12.

A very short notice of this question is taken by Burlemaqui. He begins with a declaration, "that it is a right inherent in all free people, to have the liberty of removal, if they think proper. When a person becomes a member of a state, he does not thereby renounce the care of himself and his affairs. He may seek the necessities and conveniences of life elsewhere. The subjects of a state cannot be denied the liberty of settling elsewhere, in order to procure those advantages which they do not enjoy in their native country." All this seems to be rational and humane.

But immediately afterwards, the same writer tells us, that this "inherent right," "which can-

not be denied," is somewhat controlled by certain maxims of duty and decency, and entirely under the control of positive law : but, finally, that if the law does control it, a man is not bound to live under a tyranny.

Burlemaqui, though a native of Geneva, was tutor of the prince of Hesse. The struggle between the citizen of a free state, and the subject of an arbitrary government, between the philosopher and the courtier, is apparent. The first, however, has manifestly the advantage.

M. Vicat, doctor and professor of law, at Lausanne, contents himself, as most of his predecessors had done, with a very brief statement of his opinion. After speaking of the expulsion of citizens, he proceeds thus: "On the other hand, except in cases of great necessity, where it is intended to call out the strength of the society, the civil power, considered simply as such, has no right to restrain emigration, and the disposition to settle elsewhere : this right not being necessary for the perpetuation of the body politic, and the inhabitants of a country being, by nature, sufficiently attached to it, (if the government be tolerable) without being detained."

Vicat, vol. 3, c. 11, s. 194.

Professor Felice observes, that the particular duties of citizens, "terminate with the offices from which they flowed ; but as to general duties, they subsist as long as one continues to be a citizen, and until that character is lost. Now, a man ceases to be a citizen, in one of three ways : 1, when he goes to establish himself elsewhere ; 2, when he is banished ; 3, in case of subjection to a foreign power." After having said this, he proceeds to state the law, almost in the language of Burlemaqui, and then leaves Burlemaqui, to assert again his first position, by declaring, that every man, in becoming a member of society, reserves to himself the right of quitting it at pleasure, and could never think of bind-

Felice, vol. 1, p. 145. Droit de Gens.

ing himself to remain, during his whole life, in one particular country.

Rayneval, c.
1, s. 8, and
c. 19, s. 3.

M. Rayneval, one of the most modern of the writers on public law, advances an opinion, substantially corresponding with that of Mr. Locke, and condemns all penal laws against emigration. "Man," he observes, "whose subsistence depends upon his industry, ought naturally to seek happiness wherever he can find it; want and misery make the law for him in this respect. If his native country offers him resources, it is his nature to be attached to it. If it does not, by what right, I will add, with what motive, shall we seek to arrest and to punish him? May he not say, give me and my family assurance of support, or let me seek it elsewhere? The law of nature, which is that of self-preservation, will be to eternity stronger than all the maxims and calculations which politics can present. We are wrong to say, that this man injures his country, by carrying his industry abroad; he may justly reply, that his industry is his own, and that he has a right to carry it where it can furnish him subsistence."

There are four British writers, who have given to the world their opinions on this subject; Locke, who has been already quoted, Rutherford, Paley, and Hutcheson.

Rutherford,
vol. 2, c. 2,
s. 7.

Rutherford stands alone. He is very much dissatisfied with Grotius. He charges him with inconsistency, and says, that he has furnished the means of refuting his own argument. His opinion is, that no man can leave his country, without first obtaining permission, although there be no law to prohibit emigration. People, however, of no importance, may do as they please; they may go away at their discretion; but they must not depart in great numbers.

That Rutherford *should* stand alone, in relation to a question so important to human liberty and happiness, is a circumstance calculated to

strike us with surprise. But this surprise will cease, when we recollect, that he was professor of divinity in the university of Cambridge, rector of Sheffield and arch-deacon of Essex. The dignitaries of an established church, according to the evidence of history, are not generally the advocates of the rights and liberties of their fellow creatures.

Paley, who was also a divine, and a dignitary, but who commenced his career by superintending a school, conceives, "that men may relinquish their country, from a sense of insecurity, oppression, annoyance or inconvenience, and that emigration ought neither to be prohibited nor discouraged."

Payley; Moral & Polit. Philo. c. 11.

Hutcheson was professor of philosophy in the university of Glasgow. "In times of peace," he observes, "it would seem unjust and dishonorable, to any state, to hinder its citizens from selling their lands, and removing to any other state they please, and *freeing themselves from their former political relation*. For the several subjects by the taxes or tributes which they pay annually, compensate all the ordinary advantages which they receive from the community, and it would be unjust to hinder them from consulting better their own interest, if they can, elsewhere. Nor is there danger, that any state will be deserted by many of its subjects, *unless it be either miserably constituted or administered*, and in such cases, the citizens have a better right to quit it, and cannot be compelled to remain its subjects."

Hutcheson, Mor. Philos. b. 3, c. 5, s. 2 & 3.

The foregoing special, and perhaps tedious statement, has been made with three distinct views.

The foregoing statement, why made.

The first is to prove, by actual quotations, that the common law doctrine of perpetual allegiance is not supported by any of the distinguished writers on public law. In truth, the idea, that a man domiciled in one country, could be regarded

1. To show Blackstone's error as to the principle of universal law.

as the subject of another, seems never to have occurred to one of them. This ought not to be forgotten.

2. To recommend a different mode of discussing questions of public law.

My second object is, to introduce, as far as the admonition of an obscure individual can tend to introduce, a mode of discussing questions of national law, different from that which commonly prevails. Most writers seem to think, that their arguments are secure, when sheltered by a dictum, from Grotius, Puffendorf, Burlemaqui or Vattel, and are, therefore, more in the habit of repeating what *they say*, than of examining questions on the great principles of reason, justice and expedience. The first is a task of little labor; and after it has been performed, we only know what they have said, without acquiring any valuable information, as to the merits of the subject. The latter course is attended with far greater difficulty; but it will finally conduct us to a point otherwise unattainable.

Let me not, however, be understood, as wishing to detract from the credit, justly due, to many of the writers, who have been named. They have great merit. They were the friends of man, and the advocates of freedom. Their writings, often replete with learning, have contributed much to enlighten the world, and to mitigate the severity of despotism. Their opinions, when clear and consistent, may be regarded as *prima facie* evidence of what is law and right; but they are no more than evidence; and like all other evidence, they may be repelled by other testimony. In the course of the preceding pages, we have seen how slight their pretensions sometimes are, to that authority, which is so frequently ascribed to them.

In hazarding these observations, it is obvious, that I lose a portion of that aid, which they almost unanimously afford to the principles here advocated. In objecting, therefore, to the conclusive authority of their opinions, I cannot be

suspected of being influenced by policy, rather than respect for truth.

My third object is, to justify myself, for the direct, but, I hope, not disrespectful contradiction, which I have offered, to Blackstone's position, that perpetual allegiance is founded on a principle of universal law. The influence of his Commentaries, in the United States, where the common law prevails, (as the law of the several states,) is almost boundless in all legal questions. His book is generally the first which is put into the hands of the student. The clearness of its arrangement, the elegance of its language, the matchless accuracy of its definition, and the vast mass of information which it exhibits, have raised, and justly raised, the writer to the highest rank, among the teachers and expositors of municipal law, and given a currency and credit to his opinions, to which they are not always entitled. So strong and so general, at this moment, is the faith reposed in Blackstone, that, of the few who may read these pages, there will be, I have no doubt, some whose habitual reverence for him will induce them to suppose, that his proposition is yet susceptible of a complete vindication, although they may not know, nor even be able to conceive, how that is to be effected.

The object of the next inquiry, into which I originally purposed to engage, was to ascertain, how far the right of impressment could be inferred, from the doctrine of perpetual allegiance. It will, however, be more in order, to present to the reader a view of this doctrine, as exhibited on this side of the Atlantic.

The first page of the Declaration of Independence, asserts, not in terms, but substantially, the principle of expatriation. "We hold these truths to be self-evident," say the authors of that declaration, "that all men are created equal,—that they are endowed, by their Creator, with certain unalienable rights—that among these,

3. To justify the contradiction offered to Blackstone.

View of this subject as understood in the U. States.

Decl. of Independence.

“are life, liberty and the pursuit of happiness.” In this pursuit of happiness, every man is at liberty to go, whithersoever his judgment, or his hope, or even his caprice, may lead him.

Constitution of the United States adopts naturalization.

In conformity to this idea, the framers of the constitution of the United States, by the 8th section of the 1st article, delegated to congress the power “to establish an uniform rule of naturalization.” This rule has been established. Within less than twelve months, after the organization of the government, a law was passed for this purpose. By all the laws passed since the first, the oath of abjuration has been prescribed. The second section of the act, adopted in January, 1795, during the administration of general Washington, expressly requires, that the alien, who wishes to become a citizen, shall “absolutely and entirely renounce and abjure all allegiance and fidelity to every foreign prince, potentate, state or sovereignty, whatever, and particularly, by name, the prince, potentate, state or sovereignty, whereof he was before a citizen or subject.”

Foreign allegiance to be abjured.

It has been before remarked, that naturalization, *ex vi termini*, implied the extinction of all former allegiance. This point, in the United States at least, is settled. By naturalization, all former allegiance is *abjured* and extinct.

Coincidence on this subject between the two great parties in the U. States.

On this subject, the two great parties in the United States, divided, as they have been, on almost every question of foreign and domestic policy, have uniformly agreed. The federalists, when they had the administration in their hands, and the republicans since, have both passed laws requiring this oath of abjuration, and have thus solemnly avowed their direct opposition to the doctrine of perpetual allegiance. Of late, indeed, that is, since the present war with Great Britain, one cause of which is supposed to be connected with this doctrine, it has been discovered, and urged by some, that when a British subject “doth absolutely and entirely renounce and abjure all

"allegiance and fidelity to George the 3d, by name," the oath must be understood with a sort of mental reservation, which keeps alive that very allegiance, that is thus particularly and by name abjured!

In addition to this, it ought to be remarked, that the individual states, previous to the adoption of the federal constitution, had generally, if not universally, acted on the principle ingrafted on that constitution, by the section before referred to. Naturalization by the states before the Constitution of the U. States.

Thus we see, that the states, the framers of the constitution, and the two great parties in the United States, have concurred in their condemnation of the principle of perpetual allegiance.

With the judiciary of the United States, however, there seems to be yet some difficulty. It has not yet been fully and finally decided, that a citizen of the United States may throw off his allegiance, and cease to be a citizen. Judicial decisions or dicta.

In the case of Talbot against Jansen, (42) it appeared to be the opinion of some of the judges of the supreme court, and very strongly expressed, that a citizen of the United States might lawfully expatriate himself; but the point was only incidentally introduced. The question of law could not be decided, as the fact of expatriation was not believed to be established. (42) 3 Dal. 133. Talbot vs. Jansen.

Judge Ellsworth is reported, however, (43) to have been of a different opinion, and to have decided, in the case of Williams, that the connexion between a citizen of the United States, and his country, cannot be dissolved. Ellsworth's opinion. (43) 2 Cranch, 82.

On this case, a single remark only is necessary. The ground of the decision is, "that the common law of this country remains the same as it was before the revolution." That the common law of England has no force or authority whatever, under the government of the United States, and that it is the rule of decision in the courts of the United States, only so far as it has been adopted by the constitution and laws of the Unit- Error of that opinion.

ed States, and so far as it is the law of the several states, are propositions, of the truth of which no evidence need now be offered. These points are believed to be finally settled.

(44) Murray
vs. the
Charming
Betsey, 2
Cra. 120.

In the year 1804, the supreme court of the United States, in the case of Murray against the Charming Betsey, (44) decided, that a citizen of the United States, who had become a citizen of a Danish West India island, had so far ceased to be a citizen, as not to be within the purview of a law, prescribing a penalty on those engaged in a certain interdicted trade. In this doctrine, there is an exact coincidence between the supreme court of the United States and the English courts of civil and admiralty jurisdiction. It is proper to state, that the court in this case expressly declare, that they do not decide the general question.

Court of Ap-
peals. Mur-
ray vs.
M'Carty.
(45) 2 Munf.

In the court of appeals, however, in the state of Virginia, in the case of Murray vs. M'Carty, (45) the question has been met, and decided. The court maintain the right of expatriation. "The state of Virginia," says judge Roane, with no less emphasis than propriety, "did not presume to confer this *right* on its citizens, it being one of paramount authority bestowed on us "by the God of nature."

But although this great question has not been formally and finally decided in the supreme court of the United States, it is apparent that the principle of expatriation has been supported by the concurring opinions of the great body of the American people, and particularly of that illustrious portion of them, who, with Washington and Franklin at their head, after the most mature deliberation, promulgated the constitution of the United States.

Ellsworth's
opinion again
noticed.

Judge Ellsworth, it is true, remarks, that the right of American citizens to expatriate themselves cannot be inferred from the constitution and laws of the United States, authorizing the

naturalization of foreigners here. "When a foreigner presents himself here, we do not inquire what his relation is to his own country." True: the inquiry is not made; but why is it not made? The relation in which he may have stood to his native country, is deemed no bar to his admission. Erroneous, why. It is taken for granted, that he did owe allegiance to that country, and, therefore, the abjuration of that allegiance is expressly and particularly required. Is not this a solemn declaration, that allegiance is not perpetual? And if we affirm, that, in principle, the allegiance due by foreigners to other governments, may, legitimately, be thrown off, do we not also affirm, that our own citizens may throw off the allegiance due to the United States? Allegiance is either perpetual or not so. If it be perpetual, the principle which makes it so is scandalously violated by the constitution and laws of the United States. If it be not so, on what ground can it be said, that the citizens of the United States cannot, by emigration, dissolve the connexion between their country and themselves? In truth, judge Ellsworth's decision is as derogatory to the character of his country as it is repugnant to right and to law.

In taking a view of the subject, as exhibited on this side of the Atlantic, we cannot overlook the note which is to be found in the appendix to the American edition of Blackstone's Commentaries. Tucker's note. Mr. Tucker, formerly a professor of law in the university of William and Mary, afterwards a judge of the court of appeals, and now a judge of the United States' court, for the Virginia district, has employed several pages to establish the right of expatriation. A quotation from these pages is deemed unnecessary, as the book itself is so generally accessible.

I repeat, therefore, that the principle maintained in these pages is supported by the concurring opinions of the great body of the American peo- Right of expatriation maintained by the great body of the

American
people and
their law-
givers.

Respect due
to them,
what.

Mably's
opinion.
(46) *Oeuv. de*
Mably, vol.
8, 286.

ple, and especially of those enlightened men who formed the constitution of the United States.

What respect ought to be paid to this high authority by foreigners, foreigners themselves shall say. "Whilst almost all the nations of Europe," says the Abbe de Mably, in a letter to Mr. Adams, then minister in Holland, (46) "are ignorant of the constituent principles of society, and regard the people only as beasts of a farm, cultivated for the benefit of the owner, we are astonished, we are edified, that your thirteen republics should know at once the dignity of man, and should have drawn from the sources of the wisest philosophy, the principles by which they are disposed to be governed."

Rayneval's
opinion.
(47) *Institu-
tions du droit*,
&c. note 17,
on the 1st
book.

M. Rayneval, (47) after having remarked, that "insurrections had only served to displace, replace, and rivet the chains of the people," repels the objection which he anticipates from the American revolution. "As to the United States of America, the example is solitary in the annals of nations; never was a revolution conducted by men so wise, so moderate, so disinterested; never has a revolution been brought about by so much moderation, circumspection, and forbearance. It was not effected by the people in a tumult, nor by the effervescence of passion; it was not the fruit of a levelling and sanguinary philosophy; it was not the offspring of necessity; its only object was, to abolish an authority subversive of the social compact. The Americans did not go beyond that point. We may be convinced of this, in reading their history during and since the revolution. Therefore, it has been said of them, with truth, that they began where other nations end; that is to say, that they have commenced their career by being just, moderate, and wise. Of what revolution can we say the same thing?"

The idea of
perpetual al-
legiance only

From the foregoing details it seems obvious, that the doctrine which opposes the perpetuity of

allegiance, stands, in relation to national authority, if I may use the expression, on much higher ground than that by which it is affirmed. The affirmative doctrine, according to Blackstone himself, took its rise in an ignorant and barbarous age, from a feudal tyranny long since exploded, and crept, by "an easy analogy," into the general system of British jurisprudence. On the contrary, the doctrine here sustained, has been openly and distinctly proclaimed, by a free people, in an enlightened age, with a full knowledge of the usages and laws of England, and of the history of that country and of all Europe.

ginated in a barbarous age.

Not so with the contrary doctrine.

The people of the United States knew full well, that although the perpetuity of allegiance was maintained by the courts and jurists of England, as founded on a principle of universal law, the theory was contradicted by the practice of the British government, and of every civilized nation, in ancient or in modern times. They knew too, that, according to a principle of the law of nations, about which, hitherto, there has been no dispute, every sovereign state may rightfully prescribe the terms on which strangers shall be received within its limits. (48) The same law taught them that it was their duty to admit strangers within their territory. Now, if it be the duty of states to admit strangers within their territory, and, if the terms of admission may be, as indeed they must be, prescribed by the states so admitting them, do not these states act legitimately and rightfully in exacting an allegiance, which shall for ever extinguish all claim of allegiance to any other power on earth?

All sovereign states have a right to prescribe to strangers the terms of admission.

(48) Vattel, b. 1, c. 19, s. 230.
Puff. b. 3, c. 3, s. 10.
Grot. b. 2, c. 2, s. 16.
Vicat. vol. 3, s. 205.

And what good, it may be asked, has this doctrine of perpetual allegiance ever done to the world, or to the nation, whose government seems disposed to maintain it? None. On the contrary, bad in theory, it is odious and detestable in practice. It has served to embroil two nations, connected by blood, and still more by their mutual

Mischiefs of the doctrine of perpetual allegiance.

To embroil.

wants and interests: two nations, speaking the same language, professing the same religion, governed by the same municipal laws, instructed by the same great teachers of jurisprudence and ethics, and both claiming credit with the world for their respect for the rights and happiness of men. In its operation on individuals, it is in the highest degree oppressive and cruel. It affords to tyranny a pretext to gratify its vindictive spirit, under the appearance of a legal sanction. It broke the unfortunate Patkul on the wheel, at the very moment when love, and youth, and beauty, awaited him at the altar: and condemned to death the Frenchman who fought in defence of a country, in which he had lived from his infancy. What further havoc it is to commit among mankind, the British government is to decide. At this very moment there are nearly one hundred human beings, not only innocent, but brave and honorable men, who are languishing, not merely in captivity, but in dungeons, doomed, perhaps, to be the victims of this detestable principle, and of the angry spirit of retaliation, which it can scarcely fail to produce. If that day shall ever arrive, which may God in his mercy forbid, whatever sentence necessity may pronounce, humanity must mourn! But that day cannot arrive. The British ministers, the responsible agents of a generous nation, will not, and if they would, dare not, pollute that nation and themselves, with the blood of men, whose only crime is the defence, the open, manly, honorable defence of the country, which they had chosen as their own.

I will close this part of the subject, by a few remarks on two points, about which there seems to be some difference of opinion among the advocates of the right of expatriation.

Law pre-
scribing a
mode of ex-
patriation
not, perhaps,
necessary.

In the case of Talbot and Jansen, before noticed, it is said, by judge Patterson, "that a statute of the United States, relative to expatriation, is much wanted." I cannot assent to the pro-

priety of this remark. A statute cannot be necessary to give the right. Its existence, independent of any statute, has already been shown. If it be required for the purpose of ascertaining, as the judge intimates, the manner in which expatriation may be effected, the answer is furnished by what has been already said. Expatriation is emigration, with an intention to settle permanently abroad. Each case, therefore, ought to depend on its own circumstances. The fact of removal, and the intention, ought to be distinctly proved. If a form of expatriation be prescribed, the form will be observed, when, perhaps, the real bona fide intention does not exist. The case before the judge was a proof of the truth of this remark. Ballard had, in due form, renounced his allegiance to the state of Virginia, but had never gone to settle himself elsewhere. A special law on the subject would be attended with much difficulty, and probably be liable to great abuse: a general law, however, a law *declaratory* of the existing right, under the laws of nature, and our own constitution, it might, perhaps, be wise in Congress to adopt.

Declaratory law, better.

In the case of Murray, &c. Jared Slatuck had become a naturalized citizen of a Danish island, and it is thought, by some, that naturalization abroad is essential to the consummation of expatriation.

It has been just remarked, that expatriation consists of fact and intention. Both must be proved. Unquestionably satisfactory evidence, or what may generally be deemed satisfactory evidence, of such intention, is afforded by the deliberate assumption of the character of citizen of another country; in other words, by naturalization, according to the laws of that country. But this is not the only evidence. A case at once presents itself, in which the intention is as clearly proved, as it would be by naturalization: perhaps more so. Citizenship is sometimes assumed

Assumption of the character of citizen in the adopted country not necessary to complete expatriation.

for purposes of mercantile speculation. Foreign allegiance is abjured, but every foreign predilection remains rooted in the heart; and, that predilection sometimes leads a man back again to the country which he left. But, in the case about to be stated, the alien must be a citizen in heart and in sentiment. Let us suppose that a native of Great Britain or Ireland, long resident here, with a family of children born here, and with property acquired here, should, though never naturalized, take up arms, as a volunteer, in defence of the United States, in their present contest, and bravely risk his life in battle. Would not the situation in which he stood, and this conduct, be at least as strong evidence of his intention never to return to his native land, as is afforded by the naked oath of allegiance and abjuration? In fact, if expatriation be not complete, until the character of citizen of some other state shall be assumed, what is to become of the emigrant in the interval between his removal, and this assumption? In some instances this interval may be of long duration: in others, the naturalization may never be effected. At one time no foreigner could be admitted to be a citizen of the United States until after a residence of fourteen years. In Great Britain, the character of subject (except in the cases before noticed,) can be acquired only by a special act of parliament. Now, would it be contended by any advocate for the right of expatriation, that an American citizen, carried in his infancy to Great Britain, and established there, with all his interests, for twenty, thirty, or forty years, is still a citizen of the United States?—The proper answer to this question, is conclusive on this subject.



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